
THE **LEGISLATURE** IN
IMMIGRATION POLICY-MAKING

A LIBERAL CONSTRAINT?

PETER WILLIAM WALSH

THE LEGISLATURE IN IMMIGRATION POLICY-MAKING

A LIBERAL CONSTRAINT?

PETER WILLIAM WALSH

Fitzwilliam College

September 2017

This dissertation is submitted for the degree of Doctor of Philosophy.

THE **LEGISLATURE** IN
IMMIGRATION POLICY-MAKING



UNIVERSITY OF
CAMBRIDGE

Summary

Title The Legislature in Immigration Policy-Making: A Liberal Constraint?

Author Peter William Walsh

Abstract

Over the last thirty years, research on the immigration policy-making of liberal democratic states has been preoccupied with the puzzle of why migrant inflows have reached unprecedented levels in Western countries, despite popular calls for restrictionism. A common response of scholars to this puzzle is that whilst governments endeavour to reflect public preferences for restrictive immigration policy, they are prevented from doing so by norms and institutions that are characteristic of liberal democracies. These ‘liberal constraints’ include the national judiciary; international human rights norms; and supranational institutions, such as the European Union.

But what of the national legislature? What is the role of this key liberal institution in shaping immigration law within Western democracies? On this question, the literature says remarkably little.

This thesis endeavours to redress this apparent neglect. Its case study is the United Kingdom, which is viewed, on the basis of existing research, as a ‘most-likely’ case for having a weak legislature; and in which the executive branch of government has been shown to be relatively unconstrained by the judiciary in comparison with other European states. Does anything, then, act to constrain the immigration restrictionism of the British government?

Informed by a novel theoretical framework, ‘interpretive political opportunity structures’, the investigation focuses upon the Parliamentary passage of a single policy: the Immigration Bill 2013-14. Its analysis is based on a detailed examination of the Bill and its legislative process; and on thirty-three interviews that I conducted with key immigration policy stakeholders, including two Government ministers, one from each of the Coalition parties; Government and Opposition MPs; members of the House of Lords; civil servants; legal professionals; and lobbyists.

The findings reveal that the UK Parliament had an important liberalising impact upon the Bill, acting to constrain the restrictionist bent of the executive. If the UK is accepted as a case in which we are most likely to find the *opposite* of this, i.e., a legislature impotent against a dominant executive, then the orthodox view that the legislature is *in general* a marginal actor in shaping immigration law may have to be revised.

Notably, the unelected upper chamber, the House of Lords, appeared to constitute a stronger check on executive power than the elected lower chamber, the House of Commons. This is consonant with Peers’ understanding of their duty to legislate *responsibly*, rather than *responsively* (i.e., in line with popular opinion) like MPs in the Commons. Insulated from populist pressures, the Lords invites comparison with respect to its function and impact to the *judiciaries* of other Western nations, suggesting, perhaps, that in the British constitutional system, known for its pusillanimous judiciary, the Lords evidences an ‘adaptation’ to the marked power imbalance between the judicial and executive branches of the UK state.

Contents

List of tables	xiii
List of figures	xiv
Acknowledgements	xvii
PART ONE ~ Setting the Scene	1
1 Introduction	3
Why the national legislature?	5
Case selection: why the United Kingdom	12
The UK as a ‘most-likely’ case	12
What explains the ‘gap’ in UK immigration politics?	16
This study: theoretical perspective and methodology	18
The Immigration Act 2014: genesis and elaboration	20
The Queen’s Speech	23
The thesis in outline	26
2 ‘Gaps’ in the literature	29
The ‘gap hypothesis’: a history of the central idea in immigration policy research	30
A failure to mind the gap	38
Immigration policy: a conceptual framework	40
The two main gaps in the literature on immigration policy-making	52
3 Explaining the public opinion-law gap – a review of the research literature	55
Organised interest groups	56
Sources of the ‘liberal constraint’	58
The national judiciary	59
State bureaucracies	61
“Embedded liberalism”	62
International human rights norms	63
Global capitalism	65
Supranational institutions	65

The role of the legislature in shaping immigration law: a literature review	66
The centrality of the United States legislature	67
The marginality of European legislatures	69
The role of the UK Parliament in shaping immigration law	76
4 Theoretical framework	83
A theory of political motivation: ‘interpretive political opportunity structures’	83
Koopmans and Statham: their POS approach	84
Resource mobilisation	85
Which dimensions of POS?	86
Bevir and Rhodes: their interpretive approach	90
The legislature within the Westminster system	93
The three branches of the liberal democratic state	93
The role of the UK Parliament	95
A bicameral legislature	96
An integrated approach	98
5 Methodology	99
Approaching the strange world of Westminster politics	101
Sampling	105
Access	107
Data quality	111
The decision not to audio-record	111
Trusting what elites say	115
The data	116
Methodological limitations	118
PART TWO ~ Parliament and the Bill	121
6 The UK’s post-war immigration law-making	123
Illegal immigration law: towards a definition	123
Existing definitions	123
Illegal immigration law: a definition	125
A post-war history of UK immigration law-making, 1945 to 2013	129
Post-war liberalisation, 1945–1948	130
The advent of illegal immigration law-making and the ‘bifurcated’ approach, 1962–1976	132
Restrictions on asylum and illegal immigration, 1979–1997	135

	The ‘Golden Age’ of illegal immigration law-making, 1997–2007	138
	Continuity and change	144
7	The legislative process	147
	The decision to legislate	147
	The Parliamentary process	148
	The House of Commons	148
	The House of Lords	151
8	The Commons: Second Reading	155
	Introducing the Bill to Parliament	155
	Backstage	159
	Frontstage	163
	Parliament’s uneven playing field	164
9	Commons Committee: an impotent institution?	173
	The Commons Immigration Bill Committee: the debates	175
	Sittings 1-4: the expert oral evidence	176
	The written evidence	185
	Sittings 5-11	187
	The Commons Committee: an initiator of change?	193
	Commons Committee: a ‘runny’ institution?	193
10	Commons Report	195
11	The House of Lords	201
	A new Minister of State for Immigration and Security	202
	The Commons and the Lords: a comparison	203
	No Government majority	203
	Crossbenchers	204
	Greater independence of party-affiliated Peers	206
	More deliberation	207
	More participation	208
	More non-executive amendments discussed	210
	More expert scrutiny	216
	Evaluating Parliamentarians’ specialisation	216
	Making sense of specialisation	218
	The four types of specialisation: what counts?	221
	Specialisation: the Commons vs. the Lords	225

Backstage politics	235
The statelessness clause: frontstage and backstage	237
Parliament as liberalist constraint	242
The Lords: chamber of responsibility?	244
12 The legislative impact of Parliament	247
Method	248
Findings	252
13 The legislature: the other liberalist constraint	261
The initial drafting of the Bill	262
Enter Parliament: describing its legislative impact	264
Explaining Parliament's impact	267
The Lords: a 'quasi-judicial' institution?	269
The role of the legislature in shaping immigration law: the broader significance of this study	273
14 Afterword: Parliament and Brexit	275
Appendix: On-the-record interviewees	279
Bibliography	283

List of tables

Table A	Explaining immigration policy: a survey of the research literature	6
Table B	Varying definitions of the ‘gap hypothesis’	37
Table C	Immigration policy-making in liberal democratic states: ten gaps with links to the research literature	48
Table D	The role of Western European legislatures in immigration law-making	71
Table E	The UK Parliament in immigration law-making: a review of the research literature	79
Table F	Commons Committee amendment outcomes, by sponsor	189
Table G	MPs’ activity at Commons Public Bill Committee	209
Table H	Public Bill Committee: sources of MPs’ specialisation	224
Table I	Eleven dimensions of comparison: case study findings on the nature of the two Houses	234
Table J	The Immigration Bill and the Immigration Act: a comparison of provisions	253
Table K	The fifteen changes to the Immigration Bill: results of the six-step analysis	255

List of figures

Figure 1	The United Kingdom's immigration, emigration, and net migration, June 2010 – June 2016	17
Figure 2	Conceptual framework of immigration policy, with two gaps	42
Figure 3	Conceptual framework of immigration policy with ten gaps	47
Figure 4	A schematic of illegal immigration law with examples of its measures	129
Figure 5	The post-war history of UK immigration law-making: a timeline of key periods	130
Figure 6	Patterns of continuity and change in the UK's immigration law-making, 1945–2013	145
Figure 7	The multi-stage Parliamentary process of a government-drafted Act	153
Figure 8	The number of MPs in the Immigration Bill Committee and in the House of Commons, as of 19 November 2013: a pie chart comparison	190
Figure 9	Composition of the House of Commons and the House of Lords	205
Figure 10	Outcome of tabled amendments to the Immigration Bill in both Houses of Parliament	212
Figure 11	Filtering of non-Government Commons amendments	214
Figure 12	Filtering of non-Government Lords amendments	215

Figure 13	Outcome of non-executive amendments to the Immigration Bill	216
Figure 14	Number of constituencies by percentage of foreign-born residents	223
Figure 15	A comparison of MPs' and Peers' specialisation	229
Figure 16	The number of MPs and Peers with specialisation	231

Acknowledgements

I should like to express my immense gratitude to the examiners of my thesis, Dr Shana Cohen and Professor Christina Boswell, whose detailed, thoughtful, and expert advice has brought immeasurable improvement to this dissertation.

Special thanks go to my doctoral supervisor and first year PhD examiner, Dr Thomas Jeffrey Miley, whose approachability, warmth and attentiveness distinguish him among supervisors. Thank you also to my second year examiners, Dr Hazem Kandil and Dr David Lane, for their thorough and helpful criticism.

I am especially grateful to my mentor and friend, Dr Michael Rice, whose exemplary supervision throughout my undergraduate and master's education has given me so much.

I wish to extend, further, a warm thank you to Dr John Cleaver, my college Tutor for two years. It has been a true pleasure to learn from his wide erudition; and whose unsparing support has gone far beyond the Tutor's usual call of duty.

In the Department of Sociology, the administrators are owed a particularly large debt. To the Undergraduate Administrator, Odette Rogers: your matchless competence has made our nine years together a breeze (for me, at least). And to the Graduate Administrator, my friend Karin Haack: thank you for all your help, especially for being, time and again, a most gracious Cambridge host.

I am extremely grateful to my interviewees, the MPs, Peers, civil servants, lobbyists, academics, and lawyers who gave so willingly and generously of their time and knowledge. Learning from them was a privilege. Whilst the specific contributions of these individuals remain anonymous, most of the knowledge and insights of this study are theirs. They deserve much of the credit for what follows, although I alone accept responsibility for any errors of fact or interpretation that remain. It is my sincere hope that this research has done justice to their lifetimes' work.

I would like to pay special tribute to the Liberal Democrat Peer Lord Avebury, who died 14 February 2016, one year, three months, and four days after he welcomed me into his home to give me three hours of his time and his box file on the Immigration Bill. His tireless fight for the civil liberties of those less fortunate than himself serves as an example to us all.

To my friends Ed Pickering and Tiago Carvalho: thank you for your dependable hospitality in Cambridge.

To Dr Yin Harn Lee: I am unspeakably grateful for your love and companionship over the years, which has meant the world.

Lastly, I extend my warmest thanks to my family, my (older) brothers Michael and Alan, and especially Mum and Dad, whose unstinting support, both moral and material, made my research possible.

PART ONE

~

Setting the Scene

1 Introduction

This doctoral thesis is about the role of the national legislature in shaping immigration policy, or more precisely, immigration *law*. Its case study is the United Kingdom.

Set against a backdrop in which immigration had risen to the top of the UK's political agenda – three years before that issue would come to decisive influence in the country's referendum decision to leave the European Union – this research provides an explanatory, behind-the-scenes account of the impact of the Houses of Parliament upon one of the most controversial proposals for immigration reform in modern British history: those constituting the Immigration Bill 2013-14, which culminated in the Immigration Act 2014.

Representing the flagship policy of the Coalition Government's third legislative programme, the Immigration Bill 2013-14 (hereafter, the 'Immigration Bill' or 'the Bill') sought to extend the power of the UK's immigration regime in ways unprecedented among liberal democratic states, but familiar, said critics, to the world's most despotic regimes¹. When its principal architect, Theresa May, then Home Secretary, introduced the Bill to Parliament, her statement of its main aim was unequivocal (Travis, 2013b):

To create a really hostile environment for illegal immigrants².

¹ This was the view of several Parliamentarians, most notably Lord Pannick, who stated in a speech to the House of Lords that, "There are, regrettably, all too many dictators around the world who are willing to use the creation of statelessness as a weapon against opponents" (Hansard, 7 April 2014, col 1169).

² The use of the term 'illegal immigrant' can be considered contentious, for two reasons. First, 'illegal' carries negative connotations of the violation of *criminal* laws. However, most immigration and asylum laws are *civil*, not criminal laws. Second, it has been argued that the term 'illegal immigrant' is degrading because it implies that *people* can be illegal.

For example, guidance for journalists produced collectively by Oxfam, the National Union of Journalists, Amnesty International Scotland, and the Scottish Refugee Council, states that the term 'illegal immigrant', "although commonly used, is not defined anywhere within UK law" (Oxfam, 2007: 14). The document continues: "The phrase 'illegal immigrant' was found in January 2002 by the Advertising Standards Authority to be racist, offensive and misleading. Most international organisations including the UN and the International Organisation for Migration use the term 'irregular migrant' instead." The adjectives 'unauthorised', and 'undocumented', are also used to refer to the same phenomenon of illegal immigration, especially by academics.

The more divisive of the Bill's proposals included:

- the substantial reduction of rights of appeal against Home Office immigration decisions – at a time when over half of such appeals were upheld by the courts;
- the incorporation of ordinary citizens into a national scheme of immigration control, by which private landlords would be required to check the immigration status of tenants; and
- the granting of a new power to the Home Secretary to enable her to strip a person of their British citizenship even if it were to render them *stateless* – a condition labelled “evil” by the UK Supreme Court (*R [Al-Jedda] v Secretary of State for Defence*, [2007]).

The Bill's proposals bore the unmistakeable imprint of a government keen to enact *restrictive* immigration legislation. In fact, this was of a degree unprecedented in Britain's more than three-hundred-year history of immigration law-making³. Of the Bill's fifty-seven main provisions, fifty-four were of a restrictive character. The remaining three were neutral, concerning the jurisdictions to which the Bill applied, and the timeline for its implementation.

But was the scope of Coalition restrictionism in any way delimited by the national legislature, the UK's Houses of Parliament? How far did the Parliamentary processes of legislative scrutiny, deliberation, and amendment constrain the restrictionist bent of the executive? Indeed, were the Bill's proposals changed at all by Parliament, and if so, in what ways? In particular, did Parliament's input make the final, enacted legislation, the Immigration Act 2014, either more liberal or more restrictive? And why?

Explaining the nature of Parliament's influence (or non-influence) in immigration law-making raises some key questions. What, for example, is the UK legislature's institutional autonomy with respect to the executive arm of the state? More precisely, what authority, expertise, and capacity does the legislature possess? Critically, how might we best theorise and understand the role and function of the British Parliament? Is it to

In this thesis, I use the term ‘irregular immigrant’, for the reasons stated above, as well as the term ‘illegal immigration’, which is not degrading, encompasses a number of *criminal* offences in the UK, and is the term most commonly used in UK public and political discourse.

³ This conclusion is supported by an historical analysis I conducted of major UK immigration legislation, from 1708 to 2007. The post-war part of that history is presented in Chapter 6 of this thesis.

be viewed as merely a neutral arena for the organisation and expression of societal interests and political parties, via debates and votes on prospective legislation? Or does its institutional structure serve to shape the perspectives and decisions of its constituent actors, and hence the proposals for reform that pass through it? In short, does it passively enact legislation, or actively generate it?

More generally, at a time when analysts are reporting the decline of democracy and the concentration of executive power in nation-states the world over (e.g., Shane, 2009; Armingeon *et al.*, 2013; Curtin, 2014), can elected legislators hold sway over the executive? Do they still matter – and specifically in relation to immigration law-making?

All of these questions can be asked of Parliament as a whole. But in so doing we are liable to obscure any differences that exist between the two Houses of the UK's bicameral legislature. This is why I have compared the legislative impact of the elected lower chamber of Parliament, the House of Commons, with the unelected upper chamber, the House of Lords. This distinction proved to be crucial in that my research findings demonstrated a marked division in the way the two Houses operated and in their respective levels of influence.

Why the national legislature?

My decision to focus on the role of the national legislature in immigration law-making has been justified by my revealing its neglect by researchers. This is rather surprising, since authors on immigration law-making have collectively contributed an extensive and diverse literature, working from within a variety of disciplines: law, demography, geography, economics, history, political science, anthropology, international relations, and sociology. Across these fields, several perspectives have been applied, ranging from Marxism and political economy, to 'neo-institutionalism' and 'post-nationalism'. In total, these enquiries have identified at least twenty-four important determinants of immigration policy, including war, globalisation, unemployment, the European Union, international human rights norms, and the news media. But not one has been expressly concerned to examine the role of the national legislature, although the institution has been assigned explanatory primacy in studies of the United States (provided in Table A, under 'national legislature').

In order to clarify and confirm this general pattern of omission, Table A organises the literature according to the *main causal focus* of each study, with authors that have presented a *multi-causal* perspective of immigration policy development listed under each

of their main causal foci. At the same time, the authors of some of these studies have consciously left out the determinants they might regard as the most important, because their aim has been to highlight factors they believe have been unduly neglected, even though they are not considered of primary importance. Thus, we ought not to presume that the main causal focus in a listed study reflects the author's view of the importance of that variable in shaping immigration policy.

Table A Explaining immigration policy: a survey of the research literature

Causal category	Causal focus	Source
<i>International or supranational relations</i>	The EU/Europe (including Schengen)	Hollifield, 1992b; Soysal, 1993, 1994; Bauböck, 1994; Convey and Kupiszewski, 1995; Skran, 1995; Baldwin-Edwards, 1997; Koslowski, 1998; Guiraudon and Lahav, 2000; Guiraudon, 2000, 2001a, 2001b, 2003; Fischer <i>et al.</i> , 2002; Lavenex, 2002, 2006; Dell'Olio, 2005; Geddes, 2005; Menz, 2008; Boswell and Geddes, 2011.
	International treaties and norms (including human rights)	Salomon, 1991; Hartigan, 1992; Bauböck, 1994; Soysal, 1994; Skran, 1995; Jacobson, 1996; Sassen, 1996b, 1999; Gurowitz, 1999; Guiraudon and Lahav, 2000; Guiraudon, 2001a; Jacobson and Ruffer, 2003; Thouez and Channac, 2006; Messina, 2007.
	War	Zolberg, 1981; Meyers, 2004.
	Foreign policy	Divine, 1957; Craig, 1971; Miller, 1979; Teitelbaum, 1984; Weiner, 1985; Loescher and Scanlan, 1986; Mitchell, 1989; Suyama, 1995; Meyers, 2004; Messina, 2007.
	Security concerns	Whitaker, 1987; Weiner, 1992, 1993; Huysmans, 2000; Bigo, 2001; Rudolph, 2003; Jackson and Parkes, 2006; Boswell and Geddes, 2011.
<i>Domestic politics</i>	'The state'	Hollifield, 1992b, 2004b; Simmons and Keohane, 1992; Guiraudon and Lahav, 2000; Boswell, 2007; Hinnfors <i>et al.</i> , 2012.
	Political leaders/elites	Dirks, 1977; Hawkins, 1989, 1998; Simmons and Keohane, 1992; Gimpel and Edwards, 1999; Veugelers, 2000; Rosenblum, 2004; Cornelius and Rosenblum, 2005; Statham and Geddes, 2006; Hix and Noury, 2007; Somerville and Goodman, 2010; Wright, 2010; Bale and Partos, 2014; Consterdine and Hampshire, 2014; Consterdine, 2015a.
	Political parties	Schain, 1987, 2002, 2006, 2008a, 2008b; Thranhardt, 1995; Perlmutter, 1996, 2002; Money, 1997, 1999; Minkenberg, 2001, 2002; Schain <i>et al.</i> , 2002; Janoski and Wang, 2006; Kriese, 2006; Messina and Lahav, 2006; Triadafilopoulos and Zaslove, 2006; Statham and Geddes, 2006; Bale, 2008a, 2008b; Boswell and Hough, 2008; Duncan and Van Hecke, 2008; Geddes, 2008; Green-Pederson and Odalm, 2008; Marthaler, 2008; Smith, 2008; Van Kersbergen and Krouwel, 2008; Bale <i>et al.</i> , 2010; van Spanje, 2010; Dahlström and Sundell, 2011; Consterdine and Hampshire, 2014; Hampshire and Bale, 2014; Consterdine, 2015a.
	Electoral considerations	Money, 1997, 1999; Guiraudon, 1998; Bale and Partos, 2014.
	Public attitudes	Benhabib, 1996; Money, 1997, 1999; Gonzalez and Kamdar, 2000; Tichenor, 2002; McGann, 2003; Lahav, 2004a, 2004b; Facchini and Mayda, 2008, 2009; Ellermann, 2009; Jennings, 2009; Bale and Partos, 2014; Levy <i>et al.</i> , 2016.

Table A Explaining immigration policy: a survey of the research literature

Causal category	Causal focus	Source
<i>Economics</i>	Interest groups	Divine, 1957; Craig, 1971; Shughart <i>et al.</i> , 1986; Freeman and Betts, 1992; Simmons and Keohane, 1992; Ireland, 1994; Goldin, 1994; Freeman, 1995a, 1995b, 2001, 2002, 2004, 2006a, 2006b; Joppke, 1998, 1999; Gonzalez and Kamdar, 2000; Freeman and Birrell, 2001; Hanson and Spilimbergo, 2001; Watts, 2001; Haus, 2002; Amegashie, 2005; Messina and Lahav, 2006; Messina, 2007; Facchini and Mayda, 2008, 2009; Freeman and Kessler, 2008; Menz, 2008; Facchini, Mayda and Mishra, 2011; Consterdine and Hampshire, 2014; Hampshire and Bale, 2014; Consterdine, 2015a.
	Social movements	Bolzmans and Fibbi, 1991; Ireland, 1994; Blatt, 1995; Giugni and Passy, 2006.
	National economy (GDP, unemployment, individual-level economic self-interest of public)	Beard and Beard, 1944; Divine, 1957; Gorz, 1970; Craig, 1971; Marshall, 1973; Marx, 1973, 1976; Castells, 1975; Nikolinakos, 1975; Freeman, 1979; Petras, 1981; Zolberg, 1981; Castles and Kosack, 1985; Miles, 1986; 1987, 1989; Shughart <i>et al.</i> , 1986; LeMay, 1989; Bovenkerk <i>et al.</i> , 1990, 1991; Layton-Henry, 1990; Freeman and Betts, 1992; Hollifield, 1992a; Goldin, 1994; Straubhauser and Weber, 1994; Freeman, 1995a, 2001, 2002, 2004, 2006a, 2006b; Money, 1997, 1999; Timmer and Williamson, 1998; Borjas, 1999; Gonzalez and Kamdar, 2000; Hanson and Spilimbergo, 2001; Watts, 2001; Meyers, 2004; Amegashie, 2005; Messina, 2007; Freeman and Kessler, 2008; Hollifield <i>et al.</i> , 2008; Menz, 2008; Facchini and Steinhardt, 2011; Milner and Tingley, 2011; Consterdine and Hampshire, 2014.
	Global capitalism/globalisation	Zolberg, 1978, 1999; Sassen, 1996a, 1996b, 1999; Watts, 2001; Jackson and Parkes, 2006; Consterdine and Hampshire, 2014.
<i>National culture</i>	Citizenship; identity (national/ethnic/racial)	Higham, 1955; Divine, 1957; Jones, 1960; Foot, 1965; Dirks, 1977; Zolberg, 1978, 1981; Freeman, 1979; Herbert, 1990; Brubaker, 1992; Bauböck, 1994; Pak, 1994; Schnapper, 1994; Stalker, 1994; Kurthen, 1995; Leitner, 1995; Fitzgerald, 1996; Rex, 1996; Paul, 1997; Favell, 1998, 2001; Joppke, 1999; Koopmans and Statham, 1999; Hansen, 2000, 2002; Rosenhek, 2000; Hollifield, 2004a; Meyers, 2004; Dell'Olio, 2005; Hampshire, 2005.
<i>Demography</i>	Ideas/ideology/discourse	Dirks, 1977; Bleich, 2002, 2003; Balch, 2010; Milner and Tingley, 2011; Alexander, 2013; Consterdine, 2015a.
	Immigration (previous/current)	Hammar, 1985; Brubaker, 1992; Bauböck, 1994; Goldin, 1994; Convey and Kupiszewski, 1995; Freeman, 1995a, Money, 1997, 1999; Zolberg, 1999; Hampshire, 2005; Messina and Lahav, 2006; Smith, 2008.
	Ethnic diversity	Rex and Tomlinson, 1979; Miller, 1981; Ireland, 1994; Money, 1997, 1999; Richmond, 1998; Borjas, 1999; Meyers, 2004; Hampshire, 2005; Fetzer, 2006.
<i>Information</i>	Information supply; experts/expertise; 'policy narratives'	Tichenor, 2002; Messina and Lahav, 2006; Timmermans and Scholten, 2006; Boswell, 2008, 2009b; Balch, 2010; Boswell <i>et al.</i> , 2011a; Boswell <i>et al.</i> , 2011b.
<i>National state institutions</i>	Media discourse	Bauder, 2008; Gudbrandsen, 2012.
	National judiciary	Joppke, 1998a, 1999; 2001; Guiraudon and Lahav, 2000; Guiraudon, 2002; Joppke and Marzal, 2004; Jacobson, 1996; Hollifield <i>et al.</i> , 2008.
	Bureaucracies (including institutional historical legacies/path dependence)	Birrell, 1981; Schultz, 1982; Abella and Troper, 1983; Hammar, 1985; Whitaker, 1987; Hawkins, 1989, 1998; Calavita, 1992; Simmons and Keohane, 1992; Hardcastle <i>et al.</i> , 1994; Ireland, 1994;

Table A Explaining immigration policy: a survey of the research literature

Causal category	Causal focus	Source
		Fitzgerald, 1996; Guiraudon, 1998, 2000, 2002, 2003; Hansen, 2000, 2002; Rosenhek, 2000; Veugelers, 2000; Lavenex, 2002; Tichenor, 2002; Togman, 2002; Wright, 2010, 2012a, 2012b; Consterdine and Hampshire, 2014; Consterdine, 2015b.
	National legislature (with case[s])	Goldin, 1994 (US Congress); Gimpel and Edwards, 1999 (US Congress); Tichenor, 2002 (US Congress); Togman, 2002 (US Congress, Parliament of France); Rosenblum, 2004; Banaian <i>et al.</i> , 2006 (US Congress); Fetzter, 2006 (US Congress); Jeong, 2013 (US Congress).

As Table A reveals, to date few authors have considered the legislature to be important enough to feature centre-stage in their analysis, with the notable exception of eight studies of the United States. In that country, the national legislature, Congress, has long been taken for granted as the central institution within which immigration legislation is debated and shaped (Sassen, 1999: 187).

However, as far as I am aware, beyond these studies of Congress, no other researchers have examined explicitly, let alone systematically, the role of the legislature in giving shape to the content of immigration law. There are no dedicated studies; and where this institution is mentioned at all, it features at the periphery. Although it is sometimes mentioned in the narration of events, statements that address expressly its function, capacity, or impact, are few and far between. In addition, and most importantly, the role of the national legislature has yet to be conceived theoretically.

From a certain perspective, this neglect is somewhat perplexing. After all, a substantial body of research has attempted to resolve the puzzle of why, in most Western democracies, immigration has reached unprecedented levels and continues to rise, despite sizable majorities of the public wanting large reductions (European Monitoring Centre on Racism and Xenophobia, 2001; Fetzter, 2000; Facchini and Mayda, 2008; Ceobanu and Escandell, 2010; Hainmueller and Hopkins, 2014). A recurrent response of researchers to this puzzle has been to aver that national governments endeavour to reflect their publics' preferences for restrictive policy, but are constrained by institutions and norms that are characteristic of the liberal democratic states of which these governments are a part, as well as the relations between such states. Authors have referred to this as the "liberal constraint" (Hollifield, 1992a: 94; Boswell, 2007), which they see presented by: the constitutions of nation-states; the rule of law (see, for example, Hollifield on "equality before the law": 1992a: 27, 1992b: 575); the national judiciary (e.g., Joppke, 1998a); state

bureaucracies (e.g., Hammar, 1985: 279-81; Guiraudon, 1998); international relations (Hollifield, 1992a); human rights norms and associated legal agreements and institutions (e.g., Soysal, 1994; Jacobson, 1996); economic globalisation (e.g., Sassen, 1999); and supranational organisations, such as the European Union (e.g., Soysal, 1994; Sassen 1999).

But what of the legislature, that other core component of liberal democratic states? The national legislature is the “central representative institution of national politics” (Fish and Kroenig, 2009: 1), forming as it does a principal part of the organisational solution to that most basic of liberal fears: the concentration within government of too much power in too few hands.

This concern has a long history in political thought and can be traced back to antiquity and the writings of Aristotle⁴. This was over two millennia before the elaboration by Montesquieu (1748) of what has long been accepted as its best, or perhaps only, response: the separation of powers, by which the three functions of government – executive, legislative, and judicial – are vested in different, largely independent and autonomous bodies. When viewed from this angle, the very *raison d’être* of the legislature – the core of its constitutional remit – would appear *prima facie* to be to check the power of the executive. Hence, the conspicuous absence of research on the role of the legislature in immigration law-making may be thought reasonably to justify its critical investigation.

However, from another perspective, the marginal scholarly attention afforded the national legislature is not at all perplexing; it is, quite simply, a reflection of its *minimal importance*. Despite the legislature’s apparent centrality to democratic states, “the prevailing view among political scientists over the last few decades has been that parliaments play a marginal role in the policymaking process” (Martin and Vanberg, 2011: 4; cited in Russell *et al.*, 2016).

Among immigration specialists, too, the consensus is that in the immigration law-making of liberal democratic states, the role of the national legislature is peripheral, even negligible, and hence of too little significance to warrant an extensive enquiry. As we have seen, the US Congress has been regarded as the one exception.

⁴ In *Politics*, Aristotle wrote with striking prescience that (Reeve, 1998: 125): “All constitutions have three parts ... One of the three parts [1] deliberates about public affairs; the second [2] concerns the offices, that is to say, which offices there should be, with authority over what things, and in what way officials should be chosen; and the third [3] is what decides lawsuits.” Here, Aristotle describes institutions with functions similar to our modern conceptions of the legislature, executive, and judiciary, respectively.

This predominant view on the minimal role of national legislatures in immigration law-making carries some weight, and is one that can be evidenced from the literature. On Western Europe in general, Guiraudon agrees with Hammar (1985: 277-287) that in the post-war period up until the 1970s, “immigration policy was made in administrative contexts, without public participation and with little parliamentary supervision” (1998a: 288). Geddes strikes a similar tone, pointing out that: “Policy co-operation has strengthened national executive authority and weakened courts and legislatures at national and EU level because of the limited scope for scrutiny and accountability” (2000: 207).

With regard to specific legislatures, Wihtol de Wenden characterises immigration decision making in France as, “Employers and the government are deciding; Parliament obeys the government majority” (2011: 91). Even Germany’s parliament – known for its strength, being ranked first out of 158 national legislatures in the Parliamentary Powers Index⁵ (Fish and Kroenig, 2009: 756) – has in immigration law-making been depicted as unusually ineffectual. As Ellermann writes, “Although members of the Bundestag opposition are highly proactive in employing oversight, the impact on executive decision-making is negligible” (2009: 95). Similarly for Poland, where the legislature is said to represent the central institution of its state power, Kicingier and Koryśn (2011) consider parliament to be uncharacteristically feeble in the area of immigration law-making. As they conclude (2011: 361), “the lack of interest in migration shown by any political parties has led to Parliament’s role being reduced to a purely legislative one. Consequently, the involvement of Parliament in migration policy-making has not corresponded to its role in the state political system.”

Thus supported in the literature, this contrasting vantage point, which inverts our expectations for the legislature, ought to give us pause before concluding that the limited scholarly attention afforded this state organ amounts to its *neglect*. That word suggests a *failure* on the part of researchers to give this institution its due. Yet, as this perspective reveals, there may have been no such failing. The minimal space in the literature that is dedicated to the legislature could be entirely commensurate with its relatively unimportant place within the immigration politics of Western democracies.

However, there is, I wish to suggest, a possibility, which ought not to be ruled out, namely, that this apparently uncontentious and accurate picture may in fact provide us

⁵ The Parliamentary Powers Index, or PPI for short, compiled by M. Steven Fish and Matthew Kroenig, of Berkeley and Georgetown universities, respectively, represents the only systematic, comprehensive evaluation of the power of the world’s national legislatures. However, the last year for which there are data is 2009.

with a distorted portrait of the legislature's (lack of) importance and influence. This possibility arises from the comparably sure and plausible claim from the same specialist immigration literature that, as a *representative* institution, the legislature can be expected to reflect the opinion of the national public. This is due, perhaps, to a perceived obligation on the part of legislators to represent the opinion of their constituents, or alternatively and perhaps more pragmatically, from a fear of incurring the ire of the electorate by failing to do so. As Joppke puts it (1999: 103): "Parliamentary openness in the formulation of immigration policy keeps law-makers within the confines of a pervasively restrictionist public opinion."

This dynamic, which has been encapsulated by the phrase "majority pressures" (Joppke and Marzal, 2004: 824), endows the legislature with "populist impulses" (Hollifield, 2002: 109-110). Given the ubiquitous anti-immigration sentiment among the populations of Western democracies, allied to the twenty-first century trend within many of these states toward draconian immigration policies (already detected in Massey and Taylor, 2004: 1-14, 261-388), it follows that we ought to expect from state legislatures broad and consistent support for executive strictures on immigration. If, then, both the executive and the legislature are restrictionist, as researchers suggest, it is plausible that there would be little in government proposals for immigration reform that the legislature would wish to amend. As such, there would indeed be reduced scope for the legislature to evidence its power to check the will of the executive. Hence, the observation that a legislature exerts only *marginal impact* upon executive proposals *cannot* be taken to imply that it possesses only *marginal clout*. This point has been recognised by McGann, who suggests, "if the legislature was to find an agent that perfectly implemented its wishes, then the legislative-executive model would tell us that the legislature was a rubberstamp, because there was no resistance to the executive" (2006: 454-455, cited in Russell *et al.*, 2016: 290). However, the reverse would not pertain. *Substantial* legislative impact *does* imply substantial legislative capacity.

The question must now be raised as to whether scholars have convincingly considered and excluded the possibility that their data reveal only the *appearance* of the legislature's incapacity – the result of sharing with the executive a bent for restrictionism. A systematic reading of the literature suggests they have not. Moreover, are pronouncements that the legislature has but limited influence on immigration policy-making based on a strong foundation of empirical evidence? Almost all are presented without much supporting evidence or argument. As such, the answer to both of these questions must be in the negative.

Consequently, the impotence of the legislature in immigration law-making has yet to be demonstrated in the literature. This lacuna would appear, therefore, to make a dedicated empirical study most apposite. It is the nature of this investigation that is outlined in the next section.

Case selection: why the United Kingdom

This study analyses the role of the legislature in a *single country*. This, however, rightly invites questions that might cast doubt on the value of such a study. What, if anything, might we conclude more generally from examining just one nation-state? How might this case study bear upon wider debates within immigration policy research, especially those relating to the impact of the legislature upon the immigration law of liberal democratic states? Further, what contribution could a single-case investigation make to a research literature replete with such investigations, an increasing number of which populate comparative volumes, in which they are analysed systematically against other national cases, thereby allowing for the formulation of *theories* of immigration policy-making?

These are important concerns, which may be said to apply with additional force to the choice of the UK, given that immigration policy analysts have published extensively on the country, both in academic journal articles (most recently: Bale and Partos, 2014; Consterdine and Hampshire, 2014; Hampshire and Bale, 2014; Consterdine, 2015a, 2015b; Partos and Bale, 2015), and in several dedicated monographs (e.g., Joppke, 1999; Somerville, 2007; Hampshire, 2013).

In response to these concerns, I argue that the UK, as a national case study, holds unique promise for research on the role of the legislature in shaping immigration law. This is for two main reasons. The first is theoretical in that it examines the UK as a ‘most-likely’ case (Eckstein, 1975) for having a legislature that is both impotent and restrictionist. The second is related to the current state of research on British immigration politics, particularly attempts to explain the marked ‘gap’ between the restrictive goals of UK immigration policy and persistently high levels of immigration.

The UK as a ‘most-likely’ case

First, the *theoretical* reason is that a study of the UK enables particularly powerful inferences to be made regarding the role of the legislature – specifically, its *importance*

and *bent* (liberalist or restrictionist) – in the immigration law-making of Western democracies *in general*. This is because the UK represents what Eckstein has called a “crucial case” (1975), which describes a set of circumstances that may be used to test propositions derived from widely-acknowledged generalisations (see Lijphart, 1971, 1975). According to Eckstein’s seminal account, a case may be thought to be crucial if it is either *most likely* or *least likely* to fulfil a theoretical prediction. A *most-likely* case is one that is predicted by established theoretical generalisations to produce a certain outcome – *and yet does not*. By contrast, a *least-likely* case is one that is not expected, on the basis of accepted theoretical generalisation, to produce a certain outcome – *and yet does so*. “The crucial case”, says Gerring, “is a most difficult test for an argument and hence provides what is, arguably, the strongest sort of evidence possible in a nonexperimental, single-case setting” (2007: 232).

On the role of the legislature in shaping immigration law, existing research suggests that the UK can be thought of as a most-likely case with respect to two outcomes. First, the UK is predicted by established theory to be the case most likely to have a legislature that is *weak*. In the specialised literature, no national legislature is viewed as being *less* consequential in this area of law-making than is the UK Parliament (see Chapter 3). The second outcome is to do with the predisposition or *bent* of the legislature. Here too, the UK is held, on the basis of established theory, to be a most-likely case for having a legislature that is *restrictive*.

In the political science literature concerning the power of legislatures to effect legislative change, the UK’s legislature is presented as particularly weak. As Russell *et al.* (2016: 287) put it:

While legislatures in parliamentary systems are frequently dismissed as weak actors in the policymaking process, Westminster is often presented as an extreme case. For comparative scholars, it has classically been seen as at the opposite end of a spectrum when contrasted to the powerful US Congress.

On examining these comparative studies, it is indeed true that the UK legislature ranks usually near the bottom for weight of influence (see, for example, Martin and Vanberg, 2011). True also is the claim that it has long been contrasted unfavourably with the US Congress (e.g., Mezey, 1979; Kreppel, 2014). Moreover, systematic comparisons also reveal a UK Parliament that is considerably weaker than other European parliamentary systems (Flinders and Kelso, 2011; Lijphart, 2012). In this regard, particularly scathing has been the verdict of Anthony King and Ivor Crewe (2013: 361, cited in Russell and

Cowley, 2016: 132), who state that, “As a legislative assembly, the parliament of the UK is, much of the time, either peripheral or totally irrelevant. It might as well not exist.”

A part of the reason for this view is that the UK’s system of government, the so-called ‘Westminster model’, is understood to be characterised by *executive dominance of parliament*. Indeed, some view the term ‘Westminster model’ as shorthand for a political system exhibiting a strong and assertive executive, and a weak, hence compliant, legislature (e.g., Lijphart, 1999). As Somerville has observed, there is indeed a “general acceptance” among analysts that the UK does indeed embody “the ‘Westminster Model’ of government – a combination of strong parliamentary sovereignty, a first-past-the- post election system, a strong Cabinet, and executive dominance of the legislature” (2007: 4-5).

Somerville advises that this depiction of the UK Parliament also applies to its immigration policy-making (2007), with similar conclusions to be found elsewhere in the immigration literature. Thus, in comparison with the legislatures in the nation-states of continental Europe, the UK legislature is regarded as considerably less effective. Authors typically depict this by emphasising the power of the executive at the expense of the other branches of government. As Hansen has affirmed, “four factors...distinguish the Westminster model from Continental Europe: a powerful executive, a weak legislature, a timid judiciary and an absence of a bill of rights” (2000: 237). Likewise, Hampshire and Bale report that, “unlike most states, UK governments are – in normal times – constitutionally and politically empowered (by a tradition of strong executives facing relatively few legislative or judicial constraints) to act decisively if they so choose” (2015: 5). Menz also corroborates this view. “[U]nlike elsewhere in Europe”, he states, “[in the UK] the role of the courts and, more remarkably, parliament is not as pronounced, affording the executive significant political power in shaping policy” (2008: 153).

A further reason that we ought to expect a singularly weak British Parliament is that, unlike in the legislatures of continental Europe, the upper chamber of the UK’s bicameral legislature, the House of Lords, comprises unelected Peers who are typically viewed as wielding little influence. Of the eleven other EU nations with bicameral legislatures, not one appoints *all* of its members.

As Russell and Sciara put it in a literature review of the UK’s upper chamber (2008: 571):

Today the chamber remains unelected, and current reform debates are littered with references to its inability adequately to challenge the government over policy. The Lords

is seen as lacking the legitimacy that it needs to be taken seriously. In all, it is not seen as an important policy actor.

The second outcome, upon which we can expect the UK to comprise a most-likely case in immigration law-making, is with respect to the tendency or *bent* of its Parliament – towards either liberal or restrictionist policies. It ought to be highly restrictionist, scholars suggest, and more so than almost all other Western democracies. This has been credited in part to parliamentary systems, which, as opposed to republican systems like that of the United States, make governments, and their immigration legislation, more receptive to xenophobic public opinion. In addition, the UK in particular is viewed as exemplifying this trend (Layton-Henry, 1994; Joppke, 1999: 103); and this is a position that appears to remain today. As Consterdine has noted, compared with other European nations, the UK’s “constituency MPs are more receptive to the (usually) anti-immigration preferences of their voters” (2015a: 1449).

Thus, it is because the UK has been adjudged to possess among the most ineffectual and restrictive of legislatures that it enables a *critical test* of two prevailing generalisations: that within liberal democratic states, the national legislature is of *marginal importance* and *restrictionist bent*. After all, if the weakest national legislature were to be found, contra-orthodoxy, to be rather substantial in its impact – what of stronger legislatures? Might not these be of greater consequence than is presently understood? Similarly, if a legislature that is expected to be particularly restrictionist in fact proves to be liberal in its orientation, might the legislature, as an institution, be a more liberal force in the immigration law-making of Western democracies than has been typically presumed?

Therefore, if it is demonstrated that the UK – as a national case most likely to exhibit a weak and restrictionist legislature in immigration law-making – enacts law that bears Parliament’s strong liberalist influence, we would be faced with a powerful argument for the re-examination of the view, common among researchers, that the national legislature *in general* has a marginal and restrictionist role in the immigration law-making of liberal democratic states.

That is what makes the UK a crucial case. More than any other Western state, it has the potential to compel immigration researchers to re-think the role of the national legislature, and inspire fresh research into its importance, bent, and function. In turn, this might lead to a revision of much conventional wisdom in immigration scholarship.

What explains the 'gap' in UK immigration politics?

Previously I said there were *two* reasons that the UK is well-justified as a site for exploring the main question of this research. Having examined the theoretical reason, we can now turn our attention to the second reason, which is related to the current state of research on British immigration politics. In particular, an enquiry into the role of the UK Parliament throughout deliberations for the Immigration Bill 2013 ought to help answer an enduring puzzle: the cause of the marked *gap* between the executive's proclaimed goals of its immigration policy, which are restrictive; and the reality of the UK as one of the world's major immigrant-receiving countries⁶. As will be explored more fully, this is one derivation of the 'gap hypothesis'.

From May 2010, after the Coalition assumed power, the gap between a restrictive policy goal and a liberal immigration reality has found simple numerical expression. At that time, the Coalition announced their commitment to a Conservative election manifesto pledge: to "take net migration back to the levels of the 1990s – tens of thousands a year, not hundreds of thousands" (Conservative Party, 2010: 21). This target would become the central plank of the Coalition's immigration policy (Hampshire and Bale, 2014) and provides a straightforward yardstick for the measurement of the discrepancy or gap between policy goals and immigration reality. This is given by the calculation $N - 99,999$, where N = net migration and the calculation assumes that 'tens of thousands a year' = 99,999 or fewer.

As Figure 1 shows, since the target was confirmed as official Coalition policy, net migration has never fallen to within fifty thousand of it. Indeed, in the year up to June 2015, when the Coalition left office, net migration rose to a record-high of 336,000. On average, since the announcement of this net migration target, the gap between the central goal of the UK's national immigration policy, and the end result, has been an excess in annual immigration of 148,000 – this being the average (mean) difference between the quarterly net migration count and 99,999, from April 2010 to September 2016.

⁶ In 2013, the UK's total foreign-born population was 7,824,131, equal to 12.4 per cent of the total population. This placed the country sixth in the global ranking of nations by foreign-born population, behind the United States, Germany, Russia, Saudi Arabia, and the United Arab Emirates (United Nations, 2013: 5). (Note that not all UK residents born outside the UK will be classified as immigrants according to standard definitions. For example, children born to British citizens abroad whilst on holiday would not ordinarily be described as immigrants. However, despite such flaws, a country's foreign-born population is a reasonable proxy for a nation's immigrant stock.)

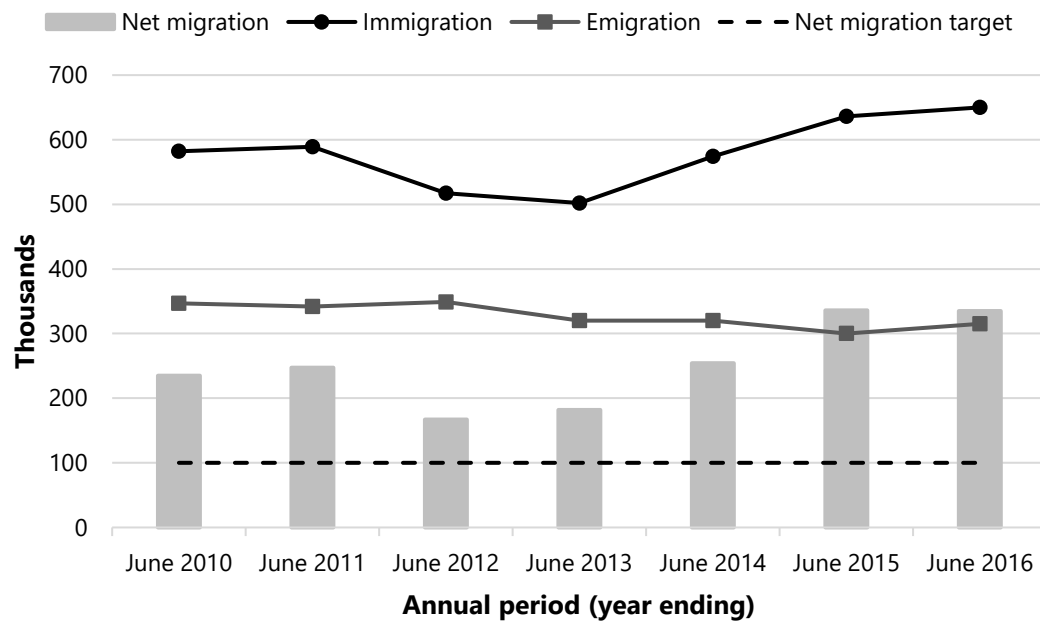


Figure 1 The United Kingdom's immigration, emigration, and net migration, June 2010 – June 2016
(Source: Office for National Statistics)

What might account for such a wide gap? For other Western states, the *judiciary* has been advanced as an important explanatory factor, constituting a major constraint upon the capacity of governments to enact the restrictive immigration laws they desire (e.g., Joppke, 1998a, 1998b). Yet, insist scholars, this does *not* apply to the UK, where the executive is thought to be relatively unconstrained by the judiciary. As Joppke has observed (1998c: 132):

[T]he immigrant and asylum-seeker's best friend—the courts—which played so prominent a role in German and US immigration and asylum battles, have been largely absent from the British scene, at least domestically. On the contrary, as the doyen of British immigration law, Ian Macdonald, put it sombrely, courts have helped 'tighten immigration control and extend the power of the state almost to the point of arbitrariness'.

If not the judiciary, what, if anything, might work to constrain the UK government's restrictionist bent, and therefore contribute to explanations of the gap between its restrictionist policy goals and the UK's large migration inflows? Could the UK Parliament

in its role as national legislature be the reason? Shedding light upon this vexing question is a central concern of this thesis.

This study: theoretical perspective and methodology

This thesis is, in the main, a political-scientific study of immigration law-making – undertaken by a sociologist. Its theoretical framework combines two well-developed existing approaches from political science: political opportunity structures, or POS, as outlined by Koopmans and Statham (2000: 13-56; Tarrow, 1998); and an interpretive approach, with a particular debt owed to the research of Bevir and Rhodes on the nature of British governance (2003).

Where POS can be said to emphasise the structural constraints that guide and limit the behaviour of political actors, interpretivism focuses its attention on their *agency*: their freedom to construct meaning, and their improvisational and creative capacity. This approach, exemplified by Bevir and Rhodes, following careful revision, therefore complements POS by recognising that whilst actors cannot escape the constraining social context in which they reason and act, they still possess the capacity to decide what beliefs, preferences and goals to hold; to make sense of the various opportunities and constraints that affect their potential to realise their goals; and to act on those interpretations for reasons that make sense to them.

This theoretical perspective, combining aspects of POS and interpretivism, implies the need for a multi-faceted research design that has at its heart an extended and rich qualitative engagement with a wide range of its subjects: the multitude of political actors who have a hand in immigration law-making.

I began this project in October 2012 when the government of the day, the ‘Con-Lib’ Coalition, had embarked upon a major piece of immigration legislation, a bill. This presented an enviable opportunity to research its Parliamentary passage in ‘real time’. It was an opportunity I seized, there being no comparable in-depth empirical analysis of the UK’s legislative process, let alone that of a *single* immigration policy. The practical and methodological merits of studying the Immigration Bill during its passage through Parliament have been considerable. For example, it allowed me to conduct first-hand analysis of Parliamentary debates through visits to the chambers of the Houses of Parliament, and has meant that events have been fresher in the memories of my interviewees.

The empirical detail and depth implied by this concentrated research process is not typical of recent fieldwork-based research of UK immigration policy-making. In fact, it is strikingly rare. At least ten studies published since 2013 have a substantial empirical grounding, incorporating many in-depth qualitative interviews, including those with ruling government politicians⁷. However, all have covered much longer periods of policy-making⁸. The strength of these investigations lies in their power to sustain conclusions of a more general character, but by the same token, what is absent in these enquiries is much sense of the detailed process by which the proposals of the executive become binding law. This is no fault of the authors, of course. It would be churlish to expect a study covering, for example, sixty years of policymaking, to contain this level of detail.

Accordingly, it is a contention of this thesis that its more concentrated focus is not merely preferable, but *necessary* if we are to understand why political actors – ministers, backbenchers, Peers, civil servants, lobbyists – behave as they do. Only in this way can the analyst seek to comprehend the ideas, motives, and powers, which led those involved to behave as they did, in given social, historical, and institutional circumstances. It is only through a close and sustained engagement with such participants that the researcher can hope to understand these phenomena of human political behaviour. It follows that such engagement must include interviewing relevant actors (thirty-one in this research); listening carefully to their points of view, both public and private; attending closely to their political behaviour, both frontstage and backstage⁹; whilst taking account of their institutional and broader political environment.

⁷ These studies are: Bale and Partos, 2014; Consterdine and Hampshire, 2014; Hampshire and Bale, 2014; Consterdine, 2015a, 2015b; Partos and Bale, 2015.

⁸ See, for example, Wright, 2010, which covers the early 1990s to 2008; Gudbrandsen, 2012, which covers 1985 to 2010; Consterdine, 2014, which covers 1997 to 2010; and Partos (unpublished), which covers the Conservative party from 1945-2015.

⁹ The concepts of the “frontstage” and “backstage” form part of a theoretical position, developed by Erving Goffman (see, for example, Goffman, 1959), that takes the theatre as its main organising metaphor. As the metaphor is understood in the social sciences and also more widely, people – who may also be called, consistent with this dramaturgical metaphor, social *actors* – play roles directed towards other actors. A social actor’s *role performance* is played before others, i.e., an audience, and occupies the space known as the frontstage. When that actor takes their leave of the audience and steps out of that role, they move into the space known as the backstage. It is here, ‘behind the curtain’ where actors are largely hidden from public view, that existing research has done little to illuminate, but whose dynamic processes of struggle, strategising, persuasion, collaboration, and conspiracy, this research aims to shed fresh light upon.

In my research, I use the term “frontstage” to refer to the things that are, in principle, viewable to the public, including political speeches, Parliamentary debates, published political

It follows that a satisfactory analysis of such micro-phenomena would be beyond the capacity of a single investigator were they to examine either longer-term trends in immigration policy-making or policy-making across multiple countries. Therefore, in order to truly ‘get to grips’ with the processes by which legislators attempt to influence immigration legislation, it made sense to refine the case study approach. Better to investigate one policy only, in minute, first-hand detail, rather than to acquire insufficiently granular second- or third-hand knowledge from a handful of such examples.

As with most choices in social research design, in opting for one approach and its inherent advantages, one is invariably faced with shortcomings that cannot be readily resolved. However, if the drawbacks of in-depth research into a single, narrow case study are plain, it is anticipated that its inherent qualities – rich empirical detail, due attention to micro-level power relations, and a focus upon the content of stakeholders’ arguments – will of themselves prove instructive. This is especially so, since the thesis examines the *legislative* and *deliberative* processes of immigration policy development, which hitherto have been almost entirely ignored, and not just with respect to the UK. As the Hansard Society noted in *Law in the Making*, “While there is enormous political, professional, media and public concentration on the operation and effect of individual laws, there is scant knowledge of the detailed process by which legislative proposals change from policy idea to binding law” (Brazier *et al.*, 2008). As such, this thesis focuses resolutely upon the institutionalised Parliamentary processes that the government must negotiate to ensure its immigration policies become immigration law.

The Immigration Act 2014: genesis and elaboration

The Immigration Act’s official life began on 26 March 2013 – as a bill. In a speech made to the House of Commons, Theresa May, the Secretary of State for the Home Department, made two important announcements (Hansard, 26 March, col 1500). The first was that the UK Border Agency¹⁰, the government department responsible for regulating

correspondence, and so on. By “backstage” I refer to the places beyond public view, where actors strategise, make decisions and formulate policies, often for reasons that analysts, or sometimes even the actors themselves, do not know. More usually, the policy-makers themselves do know, and may well try to keep the more unpalatable reasons for their decisions backstage, while presenting more acceptable explanations frontstage for public consumption.

¹⁰ The UK Border Agency (or UKBA) was the main administrative organisation responsible for the control of the UK’s immigration and borders, operating from 1 April 2008 until April 2013. It was formed as the result of a three-way merger between the Border and Immigration

immigration to the UK, was being disbanded. May's second announcement was that the Government – a coalition of the Conservative Party and Liberal Democrats – would soon introduce to Parliament its first major piece of primary immigration legislation: an immigration bill (which would come to be known as the "Immigration Bill").

In all but name, revealed my interviewees, the Coalition's Immigration Bill was a Conservative Immigration Bill. The Conservative Party was the "senior partner"¹¹ in the Coalition. It had secured 306 seats at the 2010 general election, twenty short of an absolute majority, but considerably more than its "junior partner", the Liberal Democrats, with fifty-five seats.

Their parties' respective 2010 election manifestos suggest important divergences on immigration. While the Liberal Democrats campaigned on a platform that proposed the naturalisation of substantial numbers of irregular immigrants¹², the Conservatives had crystallised in their manifesto a commitment made by David Cameron, in a television interview, to "take net migration back to the levels of the 1990s – tens of thousands a year, not hundreds of thousands" (Conservative Party, 2010: 21). Scholarly research confirms the impression garnered from the manifestos that the Coalition partners diverged substantially on immigration, with some authors observing that they "could hardly have been more different" (Hampshire and Bale, 2014: 7). Indeed, my interviewees revealed that in intra-Coalition negotiations on immigration policy, the Liberal Democrats vigorously opposed this "highly illiberal" Bill, but that the junior partner was under no illusions as to who "wore the trousers" in the relationship (these are the phrases used by my interviewees). Hence, the Bill's announcement before the Commons by the Home Secretary clearly reflected the position taken by Conservative Party.

It was on 14 May 2014, fourteen months later, that the Bill received Royal Assent and became law as the Immigration Act 2014. The Act's story may therefore be described as one of success for the Conservative part of the Coalition. But the road from broad

Agency (BIA), UKVisas, and the detection functions of HM Revenue and Customs. UKBA operated in 135 countries, with approximately 20,000 staff, and managed an annual budget of approximately £2.17 billion (National Audit Office, 2012: 4). In April 2013, UKBA was split into two new organisations, UK Visas and Immigration, responsible for the UK visa system, and Immigration Enforcement, responsible for the enforcement of immigration law.

¹¹ "Senior partner" and "junior partner" were the terms employed by my interviewees.

¹² The relevant passage in their manifesto stated: "We will allow people who have been in Britain without the correct papers for ten years, but speak English, have a clean record and want to live here long-term to earn their citizenship" (Liberal Democrats, 2010: 76). This policy was derided widely in the tabloid press.

political intent, to confirmed law of the land, was for them hardly smooth. The life of the Bill has been at times a dramatic and controversial one. It entailed widespread alarm about the expiration of labour market restrictions on Romanian and Bulgarian migrants¹³, which, it was feared, would lead to ‘masses’ of them ‘flooding’¹⁴ into the country on 1 January 2014. Although this was a concern that failed to materialise¹⁵, there was a belated (and unsuccessful) Tory rebellion to reintroduce labour market controls on Romanian and Bulgarian immigrants. The Bill’s passage also witnessed the resignation of the Immigration Minister, Mark Harper, after it was revealed that his domestic cleaner was an irregular immigrant¹⁶. This could be seen as somewhat ironic, as this was precisely the category of immigrant that Harper had undertaken to be “tough on” (Home Office, 2013a: 1). Yet it was not long before Harper’s replacement, James Brokenshire MP, also reignited

¹³ Romania and Bulgaria joined the EU on 1 January 2007. The accession treaties allowed the other EU Member States to apply restrictions on the free movement rights of Bulgarian and Romanian workers, for up to seven years after accession, officially to protect Member States’ labour markets. The UK government applied restrictions for the maximum period of seven years. Throughout this period, the opportunities for Bulgarians and Romanians to come to work in the UK have been limited to four schemes: a special scheme for highly skilled workers; a second route for skilled workers; and two quota-based schemes for low-skilled work in the agricultural and food processing sectors, respectively. However, when the transitional restrictions expired on 1 January 2014, Bulgarian and Romanian workers were eligible to work, or to look for work, in the UK, on the same basis as all other EU citizens (House of Commons, 2013).

¹⁴ For one of many examples of this kind of language, see Sheldrick (2014).

¹⁵ Commenting on this in the Lords, Lord Avebury (Eric Lubbock) noted that UKIP and the *Daily Mail* had helped to “create fear in the minds of the public. We saw this in the totally unjustified hysteria over the floods of Bulgarians and Romanians who were allegedly ready to invade the country on 1 January, when the hordes of newsmen greeting a flight from Bucharest were disappointed to find that only two of the passengers were Romanian” (Hansard, 10 Feb 2014, col. 452).

¹⁶ In tendering his resignation, Mark Harper joined a number of key figures in the immigration system also compelled in recent years to resign. The immigration minister Beverley Hughes resigned in April 2004 after she denied knowledge of a visa scandal, but was later shown to have been informed of it before the time of her denial. In a television interview on BBC’s *Newsnight* in April 2004, Hughes falsely claimed she was unaware of a visa scandal in which Romanian and Bulgarian nationals were given British visas even though their applications were supported by false documents. David Blunkett resigned as Home Secretary on 15 December 2004 amidst allegations that he helped fast-track a work visa for his ex-lover’s nanny. Brodie Clark resigned as head of the Border Force on 8 November 2011, after he was blamed publicly by the Home Secretary, Theresa May, for relaxing entry checks at airports without her authority.

controversy. In his very first speech as Minister for Immigration and Security¹⁷, he suggested that a “wealthy metropolitan elite” had helped foster mass immigration by relying on cheap overseas labour (Warrell and Rigby, 2014). In this, he perhaps forgot the circumstances of his predecessor’s resignation, and the tendency of his Conservative colleagues to hire immigrants as domestic assistants. This included Prime Minister David Cameron. It had been revealed that he had hired two nannies from outside the EU, and that his wife Samantha, it had been suggested, had helped one of them to secure British citizenship (Hope and Kirkup, 2014).

Moreover, the Bill’s provisions were thoroughly criticised as “nasty and pernicious”, “nonsense”, “unworkable”, and “totally irrational”. Would Parliament then be able to shape its provisions, so that the actual Act would be more humane and practicable? To answer this question, we must first consider what those provisions were. At the time of the Bill’s official announcement by the Home Secretary its contents were largely a mystery. But they would not be for long.

The Queen’s Speech

On Friday 8 May 2013, the chamber of the United Kingdom’s House of Lords was home to the most elaborate ceremony in the British political calendar: the State Opening of Parliament. Marking the formal commencement of a session of Parliament, this annual event attracted large crowds and a substantial media presence. Its centre point, as ever, was the ‘Speech from the Throne’ (since 1952: the ‘Queen’s Speech’), in which the reigning monarch reads aloud a prepared address outlining the government’s agenda for the year to come.

In just 846 words, the Queen outlined the Coalition’s legislative programme, their third since assuming power in 2010. It contained a wide range of policies, covering the economy, benefits, childcare, the national curriculum, school exams, teachers’ pay, and mortgages. It also outlined proposals for twenty bills, one of which was on immigration. Queen Elizabeth II provided the following brief remarks:

¹⁷ The words “and security” have been added to the title of the Immigration Minister: This is perhaps to frame immigration as a matter of national security, although it could also be because James Brokenshire’s previous position was Under Secretary of State for Crime and Security.

My government will bring forward a Bill that further reforms Britain's immigration system. The Bill will ensure that this country attracts people who will contribute and deters those who will not.

Many immigration policy stakeholders located outside Westminster first learned of the Immigration Bill from these very words¹⁸. By contrast, key stakeholders inside Westminster had been working on the Bill 'behind the scenes' for many months. However, further clarity was provided later that day through the publication of a ninety-two-page document, which supplemented the contents of the Queen's Speech. An executive-authored document, it summarised the "purpose", "main benefits", and "main elements" of each of the bills announced in the speech.

With regard to the Immigration Bill, the following information was publicised (Home Office, 2013a: 64):

The *purpose* of the Immigration Bill was to:

reform immigration law, including provisions to strengthen our enforcement powers and protect public services.

The anticipated *main benefits* of the Bill were:

- Stopping immigrants accessing services they are not entitled to.
- Making it easier to remove people from the UK and harder for people to prolong their stay with spurious appeals.
- Specifying that foreign nationals who commit serious crimes shall, except in extraordinary circumstances, be deported.

The Bill's *main elements* came in three categories: access to services; enforcement and appeals; and Article 8¹⁹:

¹⁸ Interviewees were asked "When did you first learn of the Immigration Bill?". A majority of those not working in government stated that they first remembered learning of it from the Queen's Speech.

¹⁹ Article 8 refers to Article 8 of the European Convention on Human Rights: "Right to respect for private and family life." This article comes in two parts: "(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or

Access to services

- The Bill would enable tough action against businesses that use illegal labour, including more substantial fines.
- The Bill would regulate migrant access to the NHS, ensuring that temporary migrants make a contribution.
- The Bill would require private landlords to check the immigration status of their tenants.
- The Bill would prevent illegal immigrants from obtaining UK driving licences.

Enforcement and appeals

- The Bill would ensure that only those cases that raise the most important immigration issues would have a right of appeal.
- The Bill would close a number of gaps in enforcement officer's [sic] powers.

Article 8

- The Bill would contain provisions to give the full force of legislation to the policy we have already adopted in the Immigration Rules.
- The courts would therefore be required to properly reflect the balance given to the public interest when ruling on immigration cases.

These focal points of the Immigration Bill came as no surprise to commentators and other interested observers. Since the Coalition took up the reins of government, national newspaper discourse on immigration reflected concern over such issues, including migrants' access to services, especially benefits and the NHS; the Government's difficulties in deporting immigrant "criminals"; and the presence and abuses of so-called "illegal" immigrants.

crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Thus began the life of the bill that, fourteen months later, would become the Immigration Act, 2014. This too is where this study's behind-the-scenes investigation begins, leading to a critical account of the impact of Parliament on the Bill's restrictive proposals. This in turn enables conclusions to be advanced and hypotheses to be generated, regarding the role of the national legislature in shaping immigration law, drawing on the United Kingdom as a 'most-likely' case.

Needless to say, these processes and these outcomes entail considerable scholarly activity: a critical review of existing literature; identifying and utilising appropriate theories; establishing a social scientific methodology; undertaking painstaking but focused primary research; and analysing data, historical as well as contemporary, in order to determine their theoretical implications for the role of the legislature. Such considerations make for complication. It is therefore the responsibility of the author to deliver information in a way that is accessible, including the way it is structured. What follows, then, is an outline of this very structure, chapter by chapter.

The thesis in outline

This thesis contains fourteen chapters, including this Introduction, and is organised into two parts. Part One sets the scene for my case study. In Part Two, I first provide a brief history of the political context of immigration law-making in the UK, with a focus on illegal immigration law; and then present the detailed analysis, findings, and discussion of my case study.

In the next chapter, Chapter 2, I situate this thesis within the relevant scholarly literature, specifically that relating to the post-war immigration policy-making of liberal democratic states, and especially in relation to the puzzle known as the 'gap hypothesis'. In so doing, I reveal researchers' inconsistent specification of what precisely is the 'gap' to be explained. As such, this chapter serves also as a ground-clearing exercise, aimed at situating with clarity and precision the contributions of this study of the Immigration Act 2014.

Chapter 3 extends my literature review into the substantive territory of this investigation, by examining more widely what earlier researchers have said about the role of the national legislature within democratic political systems, and in the shaping of immigration law within liberal states.

The fourth chapter outlines a theory of political motivation and action, a combination of POS and interpretivism, which I have used to make sense of the behaviour of the actors at the centre of this study.

In the light of this theoretical framework, Chapter 5 recounts the methodology of my investigation; describes its multiple sources of data; and discusses issues related to sampling, accessing political elites, and the quality of the information upon which I base the findings of this thesis.

Part Two begins with Chapter 6, which provides the political background to the Immigration Bill, via a history of UK immigration law-making after the Second World War. Its particular focus is legislation aimed at regulating illegal immigration.

Chapter 7 summarises the UK's multi-stage legislative process, stage by stage, which gives structure to Chapters 8, 9, 10, and 11, which comprise the detailed empirical analysis of the Immigration Bill's passage through Parliament.

Chapter 12 analyses the impact of Parliament upon the legislative content of the Immigration Bill. On the basis of this chapter's findings, I argue that Parliament constitutes an important liberalist constraint upon executive restrictionism.

Chapter 13 brings together the main findings of the thesis, and their theoretical implications for the role of the legislature in the immigration law-making of Western states.

The fourteenth and final chapter seeks a contemporary slant. It applies the insights of this study to an understanding of the role played by Parliament in the UK's first step towards its exit from the European Union: the triggering of 'Article 50'.

This is what lies ahead for the reader. In the next chapter, we examine the scholarly literature which frames that part of the thesis regarding the puzzle of the 'gap hypothesis'.

2 ‘Gaps’ in the literature

There is a persistent ‘gap’ in the research literature on the causes and consequences of immigration policy in liberal democratic states. I am not here referring to the kind of gap that authors habitually identify and then try to fill: the gaps in our state of knowledge. I am instead referring to a term of art, which for the last thirty years has been a recurring, if not *the* recurring, focus of explanatory theories of immigration policy.

This is the so-called “gap hypothesis”, which when coined in 1994 referred, in essence, to the argument that across all major industrialised democracies there was a wide and growing discrepancy between the restrictive goals of national immigration policy and liberal immigration outcomes (Cornelius *et al.*, 1994: 3).

However, a careful review of the literature reveals the presence of not one gap hypothesis, but several. Over the years, researchers have defined this idea in different ways, thereby pursuing different investigations. Significantly, it would seem that analysts, in presenting inconsistent definitions of the gap hypothesis, have sometimes done so *unwittingly*, thus leading to a lack of precision in arguments regarding its nature and causes.

In the main, this appears to have resulted from a lack of care in authors’ specification of what constitutes the ‘gap’ in the ‘gap hypothesis’: what exactly are the phenomena that this ‘gap’ lies between. This shortcoming has, I think, been compounded by insufficient sensitivity to the multiplicity of meanings evoked by the apparently straightforward term ‘immigration policy’, which has been used as an umbrella to encompass a range of empirically distinct aspects of the social world that ought to be analysed separately.

To bring greater precision and clarity to this study, I develop an original conceptual framework of immigration policy, which disaggregates the concept into three analytically discrete constituents. These are (1) *stances* on immigration; (2) immigration *law*; and (3) the *implementation* of immigration law. Ultimately, this framework will enable us to unpick the many gap hypotheses that have animated earlier investigations, and to delineate the gap hypothesis that frames this one.

The ‘gap hypothesis’: a history of the central idea in immigration policy research

The first recorded reference to the ‘gap’, which would come ultimately to be termed the “gap hypothesis”, can be traced to 1986 in an article by James F. Hollifield (1986). Here, the author sought to explain why immigration to France and Germany had continued after government efforts to restrict it in the mid-1970s. In other words, he wanted to explain the “gap that has developed between policies...and the results of the policies...in each country” (1986: 114). Could France and Germany, he asked, have lost control of their borders? Or was something else responsible?

Hollifield provided two explanations for this gap. His first concerned the *formulation* of immigration policy: that the regulations designed to stop this new wave of immigration “had to be liberalized in the face of criticism on constitutional and humanitarian grounds” (1986: 128). Hollifield’s second explanation concerned the *implementation* of immigration policy: that “the dynamics of the migratory process, from the recruitment of temporary workers to the settlement of these workers and their families posed serious problems for the implementation of new policies designed to stop the influx of foreigners” (1986: 127).

Over time, the word ‘gap’ would come to be familiar to researchers of immigration politics, with its usage denoting a *variety* of discrepancies between phenomena that might be expected to have been in convergence. It was eight years after Hollifield first framed his investigation around the existence of a ‘gap’ that the word “hypothesis” was appended to it. In *Controlling Immigration: A Global Perspective*, Cornelius, Martin, and Hollifield introduced as one of two central theses, the “gap hypothesis”, which they defined as the argument that (1994: 3; emphasis in original):

the gap between the *goals* of national immigration policy (laws, regulations, executive actions, etc.) and the actual results of policies in this area (policy *outcomes*) is wide and growing wider in all major industrialized democracies, thus provoking greater public hostility towards immigrants in general (regardless of legal status) and putting intense pressure on political parties and government officials to adopt more restrictive policies.

This definition is problematic for at least *seven* reasons. First, the label ‘hypothesis’ is something of a misnomer. This is not a hypothesis in the stricter sense in which that term is used in the natural sciences: a *proposed explanation* for something. Rather, it is a propositional statement about the condition of the world.

Second, it must be said that this is a rather complicated proposition. It appears to make seven interrelated claims, that: (1) the gap between the goals and results of national

immigration policy is wide, and (2) is growing wider (3) in *all* major industrialised democracies, (4) leading to greater public hostility towards immigrants *in general*, which (5) is putting intense pressure for the adoption of more restrictive policies upon (6) political parties and (7) government officials. Refutation of just one of these claims would technically be enough to reject the hypothesis in its entirety. However, of course, one may be foolish to do so if, say, the only point of refutation were that *one* of the world’s major industrialised democracies had achieved its immigration policy goals. As such, it could be said that this hypothesis incorporates too many interdependent claims to make viable its testing as a whole.

Third, compounding the tortuous nature of the definition is the vagueness of some of its claims. For example, the gap between the goals and results of national immigration policy is described as “wide”. But how wide is “wide”?

Fourth, as Zolberg has observed, the goals of national immigration policy “are often ambiguous” (1999: 80). Given such ambiguity, how are we to discover and then measure them so that we can discern the direction of their fortunes? Also, even where the goals of national immigration policy are stated clearly, how are we to know that they reflect true intentions and aims?

Fifth, central to the definition of Cornelius *et al.* is the gap between the goals of national immigration policy and the *actual results of policies* in this area. But how are we to discern the results of such policies? This is not at all easy, if indeed it is even practically possible, and is a problem that has been described clearly by Czaika and de Haas (2013: 491), who state:

how can we empirically attribute a change in the volume, timing, or composition of migration to a particular policy change? The mere existence of a certain correlation between policy and migration trends obviously does not prove there is a causal link. Nor does the absence of such a correlation or the existence of a negative correlation prove that policies are ineffective. After all, the counterfactual argument is that, without immigration restrictions, the level of immigration would have been even higher.

It is perhaps due to the above five problem areas, or some combination thereof, that this unwieldy definition of the gap hypothesis is entirely absent in the literature – even in the case study chapters of *Controlling Immigration*, the book in which it originated. In its place, we find a modified version that eschews the last six of its interrelated claims, whilst modifying the first. This revised version of the definition is the proposed, or in some cases the *observed*, presence of a gap between the stated objectives of national immigration policy

and the country's (or countries') actual levels of immigration (for examples see Table C, gap [7]). Yet, to date no study has sought to address directly the "results of national immigration policy", when defined properly as only those changes in immigration that resulted from specified policies.

Sixth, although the word 'hypothesis' implies a supposition – a speculative, tentative, or provisional belief – in *Controlling Immigration* the gap hypothesis is treated as more of a gap *fact*, with its presence unanimously confirmed through the case studies of that volume. This concern was acknowledged in the second edition of *Controlling Immigration*, published ten years after the first, in which the authors concede that, "It is perhaps misleading to refer to the gap hypothesis as a true hypothesis since it is an empirical fact that few labor-importing countries have immigration control policies that are perfectly implemented or do not result in unintended consequences" (Cornelius and Tsuda, 2004: 4-5).

The seventh problem is more fundamental. It is not related to the precise formulation of the definition *per se*, but rather to its focus upon policy *goals* and hence the general puzzle it claims to identify. This issue was also identified by Zolberg, who cautions that the goals of national immigration policy are often "grossly unrealistic" (1999: 80). This has a critical implication. It suggests that any growing failure of governments to achieve policy objectives may speak to nothing more than the attempts of politicians to mollify voters who have concerns about immigration, through ever 'tougher', and hence ever more fanciful, anti-immigration promises. As an explanation for a gap that is routinely described as a vexing "puzzle" (e.g., Freeman, 2002: 77-78), even a "paradox" (e.g., Hollifield, 1992b: 584), what could be more banal than politicians' ever-more inflated rhetoric?

In the second edition of their comparative volume, the authors do propose a simplified definition of the gap hypothesis as the *thesis* that "significant and persistent gaps exist between official immigration policies and actual policy outcomes" (Cornelius and Tsuda, 2004: 4). It must be said that from the perspective of Western Europe, the gap hypothesis, in this simplified form, does ring substantially true. It identifies a real and curious observation in the immigration politics of several liberal democracies; and nowhere does this gap find clearer expression than in the UK. The magnitude of its gap is made clear in Figure 1, and this may explain why the UK's record on immigration is regarded as a 'policy failure' (Castles, 2004b).

This simplified version of the gap hypothesis raises the question of why nation-states like the UK have been unable to stem the flow of migrants to their lands, and the prospect that this may reflect a broader decline in the power of sovereign nations to control who may cross into their territories, and for how long. The possibility of this important reversal in the capacity of the nation-state is perhaps an important reason for the gap hypothesis

appearing to capture the imagination of immigration policy theorists and becoming a focal point within their research. However, successive authors have ascribed a plurality of definitions to the gap hypothesis, even when their apparent intention had been to work on the same problem.

The first major permutation of the gap hypothesis is to be found in a seminal article of 1995, in which Freeman explains why “official policies tend to be more liberal than public opinion” (1995a: 882-883). Freeman has switched attention from the results of policies to what in democratic states should be their precursor: “public opinion”. We are now dealing with a new and different gap, between what the public thinks about immigration and the substance of governmental immigration policies. Thus, different phenomena with different causal dynamics have to be explained.

This changes the direction of study from that set by the original gap hypothesis, which was concerned with gaps between the proclaimed goals of a government’s national immigration policy and resultant immigration flows (Cornelius *et al.*, 1994). In my view, however, this original version asks a question that invites a broader range of potential answers than that posed by Freeman’s gap. The goals of national immigration policy may fail to be met, and by growing margins, for any of the following four sets of reasons: (1) the goals themselves are increasingly unrealistic; (2) the forces that persuade or prevent policy-makers from enacting restrictive immigration law are increasing in strength; (3) restrictive immigration laws are ever more inadequately implemented; and (4) immigration pressures are increasing. These last two sets of explanations, the implementation of immigration law and immigration pressures, are irrelevant to Freeman’s version of the gap, because of its refocusing of attention upon policy *formulation*.

Importantly, Freeman makes explicit his shift in focus. Unlike those of other researchers, his move is an intentional one. Observing that “[p]olicy failure is too easy a means of explaining the gap [hypothesis]”, he adds that he “chose a more demanding course”: to account for the decisions of policy-makers in the first place (1995b: 911). In a later work, Freeman confirmed that his version of the gap highlights a puzzle that should be seen as complementary to the gap hypothesis of Cornelius *et al.*, stating: “To their analysis I would add an observation involving yet another gap: The central puzzle of the politics of immigration in liberal democracies is the large and systematic gap between public opinion and public policy” (2002: 77-78). More specifically, this (observed) gap is between markedly restrictionist public opinion, and more open immigration law (as revealed, in the US, in Simon and Alexander, 1993; Cornelius *et al.*, 1994; Lee, 1998; Fetzer, 2000; and in Europe in Fetzer, 2000; European Monitoring Centre on Racism and Xenophobia, 2001).

The issue raised by Freeman, which he views as *the* central puzzle, is no less significant or perplexing than the original “gap hypothesis”. After all, democratically-elected governments should, in principle, enact the preferences of publics. Given that hostility to immigration is so widespread (two particularly good literature reviews are: Ceobanu and Escandell, 2010; Hainmueller and Hopkins, 2014), it is, as Facchini and Mayda aptly note, “somewhat puzzling...that migration flows take place at all” (2008: Summary). For Freeman, then, the aim of any theory of immigration politics must be not only to explain the persistent incongruity “between the goals and effects of policies” – i.e., those of the ‘gap hypothesis’ – but also “the *related but not identical gap* between public sentiment and the content of public policy” (2002: 78; my emphasis).

For about the next decade, Freeman’s gap would for some immigration policy researchers supplant the gap hypothesis as the principal focus of attention (e.g., Statham and Geddes, 2006). This was perhaps to be expected. As previously illustrated, the original gap hypothesis asks a broad question that is beyond the primary research area of most immigration policy theorists, who are concerned mainly to explain the *formulation* of immigration policy. Moreover, explanations for the original gap hypothesis are not thought to have much to do with immigration policy formulation *per se*. The original hypothesis identifies the significance of policy *implementation* and the *drivers of immigration*. These in turn are influenced by a wide array of ‘push’ and ‘pull’ factors, including economic and social inequalities between the countries of origin and destination as well as the internal dynamics of migration networks (e.g., marriage, family migration). Neither of these domains is thought to have much to do with the formulation of immigration policy, which is precisely what Freeman’s new gap pointed to. There is then a clear analytic disjunction between these two approaches to the gap.

In her 2007 review of explanatory theories of migration policy, Boswell distinguished between these two different gaps in the literature (2007: 75), as follows:

The first deals with the gap between (proclaimed) policy objectives and outcomes. It seeks to explain why states fail to achieve the goals set out in their stated migration policies (Hollifield, 1986, 2000; Castles, 2004; Cornelius *et al.*, 1992:3). The second theme is concerned with explaining the gap between the generally protectionist bent of public opinion in democratic states, and the more inclusionary policies that often emerge.

The first of these gaps is equivalent to the original definition of the “gap hypothesis”, with the second a faithful translation of Freeman’s version. Yet, as Bonjour has observed, these separate questions have “not always been clearly distinguished in the scholarly debate”

(2011: 91). As such, in differentiating explicitly between these gaps – each of which had come to occupy its own space in the literature – and alerting us to the difference in their meaning and thereafter their explanatory foci, Boswell has brought welcome clarity to our object of study.

However, not all authors appear to have heeded Boswell’s analytic contribution. Later analyses would continue to display an inadequate sensitivity to the subtle but important distinctions that she, and Freeman before her, drew. Consequently, too many researchers have deployed the two gaps interchangeably, or worse, have advanced new definitions; and not, it would seem, always knowingly. For example, in 2010 Somerville and Goodman provided a further new definition of the gap hypothesis, even though they cite the second edition of *Controlling Immigration*, whose gap hypothesis is equivalent to that of the first edition, though simpler, as we have seen. Somerville and Goodman (2010: 952) specify their gap as being between:

public demands to limit immigration (together with the ‘control’ rhetoric of politicians) and the reality of an increasing volume of immigration.

This definition presents us with at least two difficulties. First, it merges public demands to limit immigration with policy-makers’ ostensible policy goals: their “‘control’ rhetoric”, which, to further complicate matters, may not reflect their ‘real’ goals. Public demands and policy goals are two phenomena that can operate independently, have different determinants, and which it is helpful to keep separate. Second, the main gap it posits, between restrictive public opinion and “an increasing volume of immigration”, is also different to the two earlier gaps specified by Cornelius et al., and then by Freeman.

The same authors continue to confuse matters when, in their very next sentence, they mischaracterise Freeman’s thesis as providing an explanation for the “discrepancy between restrictive migration goals and liberalised migration outcomes” (Somerville and Goodman, 2010: 952). Freeman discusses no such discrepancy. On the contrary, he argued that policy goals were in fact *liberal*, not restrictive, and as he emphasised, “I have carefully excluded from the model any consideration of the efficacy of particular immigration policies” (1995b: 911).

We next find, in 2012, the most telling definition of the gap hypothesis, by one of its original authors, Wayne Cornelius. In the *Oxford Handbook of the Politics of International Migration* (Rosenblum and Tichenor, 2012), he and Marc Rosenblum *re-evaluate* the gap hypothesis as defined in the first edition of *Controlling Immigration*. Their revised version states that it “predicts a divergence between popular demands for tight migration policies

and less restrictive immigration policy outputs and outcomes” (Rosenblum and Cornelius, 2012: 245). The “goals” or “stated objectives” from the original definition (which the authors cite) are here absent. In effect, Rosenblum and Cornelius have now provided us with a combination of *two* gaps: “popular demands for tight migration policies and less restrictive immigration policy *outputs*”, which is that proposed by Freeman (cf. 2002: 77-78; my emphasis); and “popular demands for tight migration policies and less restrictive immigration policy *outcomes*”, which is that specified in Somerville and Goodman (2010: 952; my emphasis).

It should perhaps come as no surprise, therefore, to learn that the gap hypothesis continues to be defined inconsistently, with each definition producing different questions, and hence different research. For example, Consterdine states in her article on Labour party immigration policy (2015a: 1434), that:

Labour’s managed migration policy is a pertinent example of the ‘gap hypothesis’ (Cornelius, Martin, and Hollifield 1994)—the seeming mismatch between public demands to limit immigration on the one hand and expansive policies on the other hand...

The two elements in the *original* definition, which is the one that Consterdine cites, namely (restrictive) policy goals and (expansionary) migration outcomes, appear here to be absent, having been replaced by restrictive public opinion and expansionary policies. Consterdine has seemingly confused the original gap hypothesis with Freeman’s, which, let us recall, is “related but not identical” (Freeman, 2002: 78).

I say that the elements of the original definition of the gap hypothesis *appear* to be absent in Consterdine’s version. This is because there is an ambiguity in such phrases as “expansive policies”, which authors typically do little to resolve. Are these policies to be understood as expansionary in their *content* or expansionary with respect to their *effects*, as in the notion of policies being *de facto* expansionary? To some extent this lack of certainty is compounded not only by Consterdine but more generally in the broader literature by the use of key phrases as catch-all terms. Thus, for example, ‘policies’ (whether restrictive or expansionary) can refer to: policy-makers’ goals or proposals; draft legislation; enacted legislation (actual laws); policy implementation, such as visa processing and border control; and, less intuitively, immigration and related phenomena, such as inflows, outflows, and naturalisation.

Elsewhere in her article, Consterdine provides yet another definition, writing of “the apparent ‘gap’ between expansionist immigration politics and restrictive public sentiment” (2015a: 1435). Note here the inclusion of another new and ambiguous variable,

“immigration politics”, which might ordinarily be thought to encompass public sentiment, had not Consterdine specified otherwise.

It seems most unfortunate that the *central* idea of research on immigration policy has not been more reliably translated: not only between the works of different authors, but in works with the same authorship, and, as here, within a single work by the same author. An illustrative list of the varied definitions of the gap hypothesis presented thus far, and organised chronologically, is provided in Table B.

Table B Varying definitions of the ‘gap hypothesis’

Definition and its source	Which ‘gap’?
<p>Cornelius, Martin and Hollifield (1994: 3)</p> <p>“Second, we argue that the gap between the <i>goals</i> of national immigration policy (laws, regulations, executive actions, etc.) and the actual results of policies in this area (policy <i>outcomes</i>) is wide and growing wider in all major industrialized democracies, thus provoking greater public hostility towards immigrants in general (regardless of legal status) and putting intense pressure on political parties and government officials to adopt more restrictive policies. We refer to this as the “<i>gap hypothesis</i>.”</p>	<p>Between <i>restrictive policies</i> and <i>liberal immigration outcomes</i> (The original gap hypothesis)</p>
<p>Freeman (1995a: 883)</p> <p>“Nevertheless, I want to argue that there is in general an expansionary bias in the politics of immigration in liberal democracies such that official policies tend to be more liberal than public opinion...”</p>	<p>Between <i>restrictive public opinion</i> and <i>liberal policies</i> (Freeman’s gap)</p>
<p>Freeman (1995b: 911)</p> <p>“...I have carefully excluded from the model any consideration of the efficacy of particular immigration policies – border controls, employer sanctions, visa policy, and the like. Policy failure is too easy a means of explaining the gap between public opinion and immigration policy.” (Note that by “immigration policy” Freeman means liberal immigration outcomes, which is made clear by the surrounding text)</p>	<p>Between <i>restrictive public opinion</i> and <i>liberal policies</i> (Freeman’s gap)</p>
<p>Freeman (2002: 77-78; 78)</p> <p>“The gap hypothesis, on the other hand, suggests that the distance between the goals of policies and their effects is large and growing larger in all the industrialized countries. To their analysis I would add an observation involving yet another gap: The central puzzle of the politics of immigration in liberal democracies is the large and systematic gap between public opinion and public policy.”</p> <p>“The goal of a theory of immigration politics must be to “explain persistent gaps between the goals and effects of policies as well as the related but not identical gap between public sentiment and the content of public policy.”</p>	<p>Between <i>restrictive policies</i> and <i>liberal immigration outcomes</i> (The original gap hypothesis); and between <i>restrictive public opinion</i> and <i>liberal policies</i> (Freeman’s gap)</p>
<p>Cornelius and Tsuda (2004: 4)</p> <p>“We retain the two central theses used to organize the first edition. The first, which we call the “<i>gap hypothesis</i>,” is that significant and persistent gaps between official government policies and actual policy outcomes.”</p>	<p>Between <i>restrictive policies</i> and <i>liberal immigration outcomes</i> (The original gap hypothesis)</p>
<p>Statham and Geddes (2006: 248)</p> <p>“Freeman has arguably gone furthest in developing a theoretical model to explain the purported paradox or ‘gap’ between expansionist policies and restrictive publics.”</p>	<p>Between <i>restrictive public opinion</i> and <i>liberal policies</i> (Freeman’s gap)</p>
<p>Boswell (2007: 78)</p> <p>“Recent literature on the theory of migration policy has tended to be dominated by two overlapping themes: the question of why migration policies fail; and attempts to explain the inclusionary tendency of migration and integration policies. While the two issues are often treated together – and may indeed be similarly theorized – they are in principle separable. The first deals with the gap between (proclaimed) policy objectives and outcomes. It seeks to explain why states fail to achieve the goals set out in their stated migration policies (Hollifield, 1986, 2000; Castles, 2004; Cornelius</p>	<p>Between <i>restrictive policies</i> and <i>liberal immigration outcomes</i> (The original gap hypothesis); and between</p>

Table B Varying definitions of the ‘gap hypothesis’

Definition and its source	Which ‘gap’?
<i>et al.</i> , 1992:3). The second theme is concerned with explaining the gap between the generally protectionist bent of public opinion in democratic states, and the more inclusionary policies that often emerge.”	<i>restrictive public opinion and liberal policies</i> (Freeman’s gap)
Somerville and Goodman (2010: 951) “Recent migration literature has been dominated by the question of why migration policies fail (Boswell, 2007) and in particular one of the central puzzles of immigration scholarship – the seeming mismatch, or ‘gap’ (see Cornelius <i>et al.</i> , 2004), between public demands to limit immigration (together with the ‘control’ rhetoric of politicians) and the reality of an increasing volume of immigration.”	Between <i>restrictive public opinion and liberal immigration outcomes</i> (‘Somerville and Goodman’s gap’)
Rosenblum and Cornelius (2012: 245) “[this chapter] concludes by reevaluating two hypotheses from previous research (Cornelius <i>et al.</i> 1994; Cornelius <i>et al.</i> 2004; Hollifield <i>et al.</i> forthcoming): the “convergence” hypothesis, which predicts that diverse migrant-receiving countries are moving toward common policy modes, and the “gap” hypothesis, which predicts a divergence between popular demands for tight migration policies and less restrictive immigration policy outputs and outcomes.”	Between <i>restrictive public opinion and liberal policies</i> (Freeman’s gap); and between <i>restrictive public opinion and liberal immigration outcomes</i> (‘Somerville and Goodman’s gap’)
Consterdine (2015a: 1434; 1435) “Labour’s managed migration policy is a pertinent example of the ‘gap hypothesis’ (Cornelius, Martin, and Hollifield 1994)—the seeming mismatch between public demands to limit immigration on the one hand and expansive policies on the other hand—as there was no public demand for expansion, indeed quite the opposite.” “Gary Freeman has advanced what is perhaps the most developed theoretical model to explain the apparent ‘gap’ between expansionist immigration politics and restrictive public sentiment (Freeman 1995, 2002, 2006).”	Between <i>restrictive public opinion and liberal policies</i> (Freeman’s gap) Between <i>restrictive public opinion and liberal immigration outcomes</i> (‘Somerville and Goodman’s gap’)

A failure to mind the gap

In the preceding discussion, I identified three sets of authors who cite either the original definition of the gap hypothesis found in *Controlling Immigration* (Cornelius *et al.*, 1994: 3), or the simpler definition provided in the second edition of that volume (Cornelius and Tsuda, 2004: 3). Yet these authors do not depict those definitions faithfully. Somerville and Goodman (2010: 951) cite the 2004 definition, but supplant policy goals with public demands. Rosenblum and Cornelius (2012: 245) misdefine the 1994 gap that Cornelius himself helped originally to define, incorporating into a single definition both Somerville and Goodman’s gap and Freeman’s gap. Consterdine (2015a: 1434) also cites the 1994 definition, yet goes on to describe Freeman’s gap.

It is precisely because these three sets of authors provide no indication that they are intentionally redefining the original gap hypothesis – unlike Freeman, as we have seen – that we are justified in inferring that they may well have done so unwittingly.

The consequences of this have been most unfortunate. As mentioned previously, this is because each definition specifies a different puzzle to be solved and different questions to be answered. The original gap hypothesis asks: why are immigration policy goals not met? The answer here could concern four different sets of variables and their respective questions, as follows:

- (1) The nature of the policy goals – are these unrealistic?
- (2) The content of the immigration laws enacted – are these more liberal than desired?
- (3) The implementation of these laws – are they only partially or weakly implemented?
- (4) And, migration pressures – are these stronger than usual?

By contrast, Freeman’s gap asks why the content of immigration policy is not as restrictive as the public would wish. Clearly, public opinion is a relevant variable to consider in explaining this gap, whilst policy implementation and migration pressures will have no direct relevance.

In presenting their research on immigration policy, authors do reveal that they are aware of the logical connections between the definition of their problem, research questions to be asked, and variables to consider. They clearly demonstrate analytic consistency with respect to their *own version* of the gap hypothesis: asking appropriate questions, specifying pertinent dependent and independent variables, and reaching relevant conclusions. The difficulty arises where authors define the gap hypothesis in a way that is not consistent with other authors’ definitions: identifying a gap that is different from other gaps. It is in this way that we have ended up with a plurality of gaps, each with its own research questions and set of variables. Thus, while each gap may have been consistently handled and logically interpreted, when we examine these gaps in the round – across studies – we are faced with a confusing picture, and a subject that is difficult to grasp.

How did this situation arise? The core of the problem seems to be authors’ lack of exactitude in their comprehension and communication of what, in the ‘gap hypothesis’, the ‘gap’ falls between. In not having taken enough care to ‘mind the gap’, and thereby re-defining the gap hypothesis, probably unwittingly, they share responsibility for the conceptual and analytic confusion which has resulted.

However, this problem, of the unintentional re-definition of the gap hypothesis has, I think, a root cause, that once identified and dealt with will empower the analyst to avoid repeating such missteps. This root cause is authors’ insufficient sensitivity to the ambiguity

of the concept ‘immigration policy’. It is therefore to a clarification of this apparently straightforward term that we must now turn.

Immigration policy: a conceptual framework

I say *apparently* straightforward. After all, most would agree that ‘immigration policy’ refers simply to a course or principle of action *proposed* by a government, party, or individual regarding the control of immigration. Yet further reflection reveals a complication. Any kind of public policy may be not only propositional. It may be taken one step further and *enacted*. That is, public policy can go beyond the *stances* of politicians or parties’ pledges and encompass the formal rules and regulations that derive from these and which govern a country’s immigration system. These rules and regulations are often referred to in the literature as “policy outputs” (e.g., Hollifield, 1986), though *immigration law* is perhaps a clearer label, with an established meaning in legal scholarship (Clayton, 2013). Hence, our definition of immigration policy can be broadened to encompass both political actors’ proposals and the written substance of immigration law. There is also a third possibility, which suggests itself when one considers that immigration law has no life of its own. For it to have an effect, it must influence people’s thinking and behaviour. That is, it must be administered and enforced. Here we find a third dimension of immigration policy: *implementation*.

Immigration policy is thus an aggregate concept that encompasses a plurality of phenomena. When discussing ‘immigration policy’, to which of these three dimensions do scholars wish to refer? All three of them, it seems, in isolation or in some combination – though often ambiguously. That is partly why it has been possible for the gap hypothesis to have been so frequently misinterpreted, and why it is necessary to outline a conceptual framework of immigration policy that disaggregates it into these three aspects, which can be viewed as analytically, and empirically, discrete. Respectively, these are: (1) *stances* on immigration; (2) immigration *law*; and (3) the *implementation* of immigration law.

To provide a comprehensive map of the analytic landscape that comprises immigration politics and policy, these must be distinguished from three further related concepts, which have also featured in definitions of the gap hypothesis. The first of these is *public opinion*, which, as we have seen, has supplanted policy goals in some definitions of the gap hypothesis (e.g., Somerville and Goodman, 2010: 951). The second is *immigration*, which refers to a country’s migration phenomena (inflows, outflows, etc.), and which in some definitions appears to have supplanted immigration law (e.g., Statham and Geddes, 2006:

248). Finally, we have *immigration policy effects*, which features in the original definition of the gap hypothesis, and ought to refer to only those immigration phenomena that resulted from policy changes, but is typically replaced in later definitions by *immigration* (e.g., Somerville and Goodman, 2010: 951). Together, these six elements make up my conceptual framework and are depicted in Figure 2 with the two most prominent ‘gaps’ in the literature (i.e., the gap of Cornelius *et al.*, 1994 and of Freeman, 1995).

In developing this conceptual framework, I owe a debt to the work of both Jennings²⁰ (2009: 853) and Czaika and de Haas (2013)²¹. Although my framework was developed with the UK in mind, in its essentials it can be expected to find fruitful application in other national contexts. This view is supported by its consonance with the conceptual scheme formulated by Czaika and de Haas.

²⁰ In an article examining the impact of public attitudes upon immigration policy, Jennings (2009) drew similar conceptual distinctions between various aspects of “policy”, observing that (2009: 853): “there is an understated – but important – conceptual distinction in estimations of the degree of democratic responsiveness between (1) policy, (2) bureaucratic outputs, (3) policy outputs and (4) policy outcomes. Simply, policy is equal to political commitment or intent, as measured in a particular form (such as legislation or expenditure). Bureaucratic outputs are equal to active transformation of policy intent into action either by individual bureaucrats or bureaucratic agencies.... Policy outputs are equal to the sum of activities related to policy objectives, inclusive of behaviour of non-bureaucratic actors and exogenous forces ... Policy outcomes are equal to the verifiable consequences of policy interventions, relative to exogenous forces ... This distinction between units of analysis means that – in practice – policy might fail, despite successful implementation, due to shortcomings in the underlying causal theory or resistance from environmental factors.”

²¹ I developed my conceptual framework separately to that of Czaika and de Haas, though I subsequently refined my own in the light of theirs. I depart from Czaika and de Haas in many ways. Most notably, I prefer to speak of ‘immigration law’, which has a clear definition, rather than the vaguer “policies on paper” (2013), though in practice they do appear to be referring to immigration law. I also make a firmer distinction between ‘immigration policy’ and ‘migration phenomena’, viewing the two as separate entities. For Czaika and de Haas, migration phenomena (what they call “policy (migration) outcomes”) is one of four “levels at which migration policy can be conceptualized”, the others being: “public policy discourses”, “migration policies on paper”, and “policy implementation” (2013: 494).

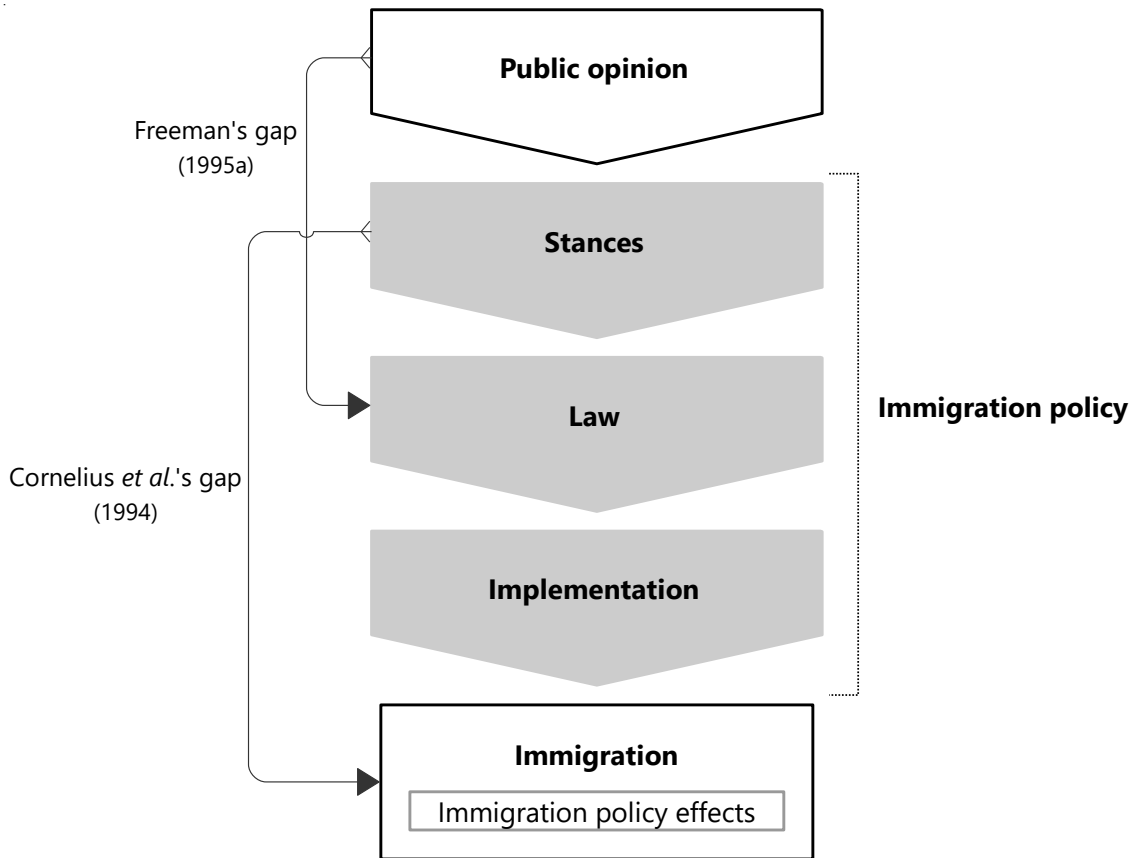


Figure 2 Conceptual framework of immigration policy, with two gaps

Examining Figure 2 and moving from the top down (though not wishing to imply a hierarchical relationship for the elements of my model), *public opinion* refers to the aggregated attitudes of a country's resident individuals regarding immigration; immigrants; the measures that should be used to regulate the former; and the treatment of, including rights afforded to, the latter. The term often seems to imply that such attitudes are held by a substantial proportion of the national population, with the opinions of the *voting* public being especially relevant to the concerns of political analysts.

My use of the term *stances* refers to the stated or inferable positions of individuals, groups, or institutions, including governments, vis-à-vis immigration and immigrants. It encompasses the discourse or 'rhetoric' of political actors, including their proclaimed goals, as well as governments' legislative proposals (e.g., immigration bills), and government proposals regarding the administration of the visa system or the enforcement of immigration controls. In the UK context, immigration policy stances will therefore include Green Papers: consultation documents produced by the government to allow people inside and outside Parliament to debate the subject at issue, and give the government department feedback on

its proposals; White Papers: documents produced at a more advanced stage of the policy process, which set out details of future legislation, and form the basis for the production of a bill to be put before Parliament; speeches; and party manifestos. ‘Stances’ on immigration is hence a rather broad concept, including a range of diverse phenomena, from politicians’ vague promises to detailed draft legislation. Yet, what these phenomena share is that they are all *propositional*.

Research has shown that there is often a considerable discrepancy between politicians’ publicly-stated stances, as conveyed by their ‘rhetoric’, and their ‘real’ positions on immigration. Often, ‘tough’ discourses are deployed to mollify voters who are concerned about immigration, but without that tough talk being translated faithfully into legislative proposals, immigration law, or border enforcement measures (e.g., Castles and Miller, 2014; Massey *et al.*, 1998). Because it is difficult to determine whether actors’ stated positions are in fact their genuine positions, the label ‘stances’, with its connotation of publicly stated opinions, refers to declared positions, either oral or written, and not ‘actual’ ones. Nevertheless, this does not preclude the possibility of an actor’s declarations reflecting their true position.

Immigration *law* refers to the total of the UK’s primary legislation (i.e., Acts of Parliament, also known as statutes); secondary legislation, known as the ‘Immigration Rules’; case law; and ‘guidelines’ pertinent to immigration and immigrants (Clayton, 2012). Immigration law, therefore, can be said to result from the translation of the more propositional stances, identified above, into specific, written legal provisions: the system of rules that are recognised as regulating the action of citizens and non-citizens with respect to immigration.

The third leg of my tripartite schema, *implementation* refers to the ways in which immigration law affects (or fails to affect) a country’s immigration and its dealings with immigrants. This includes the processing of applications to enter or remain in the country, whether as an economic or family migrant, or a refugee, as well as applications to acquire native citizenship. It also includes the activity of the courts and of the legal system in relation to the application of immigration law, and all forms of border control and within-country enforcement measures. In the United Kingdom, it encapsulates all the activities of UK Visas and Administration, the governmental agency responsible for processing immigration applications; and of Immigration Enforcement, the agency responsible for the enforcement of immigration law at the border and within the country. Implementation here excludes official departmental guidelines, which, following the conventions of legal scholarship, are classed as immigration law (e.g., Clayton, 2012). However, it does include administrative rules of thumb, also known as “professional idioms” (Rosenhek, 2000: 53). The total of a

country's activity that comprises the implementation of immigration law, I refer to as an *immigration regime*.

I am certainly not the first analyst to mark a clear distinction between immigration law and its implementation. In his chapter from the edited collection, *Migration Theory: Talking Across the Disciplines* (Brettell and Hollifield, 2000), the legal scholar Peter H. Schuck delineates the “elementary distinction in legal sociology...between the “law on the books” and the “law in action”” (2000: 187-204). The former refers to the law as formally enacted, the latter to law as actually implemented. Schuck adds that the importance of this distinction can be measured by the “immensity” of the gap between the law and its implementation, which, he observes, “while existing in all legal and social systems to some extent, is particularly large in the immigration system” (2000: 189-191).

For others, too, this particular immigration gap is “colossal” (Ellermann, 2009: 9). It has even attracted its own labels. Cornelius and Rosenblum call it the “enforcement gap” (2000: 113), Czaika and de Haas the “implementation gap” (2013: 494). Furthermore, research by Czaika and de Haas (2013: 496) has shown that this gap varies widely and depends on many factors: practical, planning or budgetary constraints; corruption, ignorance or subversion; and the discretion of civil servants or private companies in the way they implement immigration law (Ribas-Mateos, 2004; Ellermann, 2006; Menz, 2008: 235; Wunderlich, 2010).

The term *immigration* is used here to refer to a country's immigration phenomena, or what has been called the “immigration reality” (Joppke, 1998a: 266). It includes migration inflows, naturalisation, denationalisation, asylum applications, the number of people granted asylum, and so forth. It also includes, perhaps somewhat counter-intuitively, migration outflows, also known as emigration. In the UK, for example, migration is measured by the Office for National Statistics, which produces quarterly reports on immigration and emigration based on data from a sample survey. Also, there are two further main sources of data on international migration: the Home Office, which measures long-term immigration of non-EU citizens; and the census, administered decennially, which provides a snapshot of the UK's foreign-born population.

In practice, there will always be some discrepancy between these statistics and the UK's actual migration phenomena. However, to avoid unnecessary complication, the conceptual framework presented here deals only with the theoretical ‘real’ state of a country's migration. I therefore put to one side questions regarding the reliability and validity of migration statistics, which for the purposes of this thesis must be considered of secondary importance.

Finally, in the study of immigration policy it is also helpful to distinguish a sixth concept: *immigration policy effects*. Other researchers appear to refer to this or a similar concept by the term “policy outcomes” (e.g., Hollifield, 1986; Cornelius *et al.*, 1994). But ‘effects’ is a preferable term because “policy *outcomes*” has been used to refer to both *immigration law* (e.g., Guiraudon, 1998; Jeong, 2013), and the *effects of immigration law upon immigration*. It is this second interpretation of the term that is most widely held, applying as it does to all of those in Table B who used the term ‘policy outcomes’.

In my schema, *policy effects* would refer to only those patterns of immigration that resulted from identifiable stances²² or from immigration laws and their implementation. As noted earlier, however, I exclude *policy effects* from my model, because the causal relationship implicit in the term *policy effects* cannot be inferred.

Directing our attention to the first five parts of this conceptual framework, it is clear from *the literature* that they are connected by some general causal assumptions that are often implicit but seldom acknowledged. In plain terms, their reasoning follows a common-sense, linear path, namely: public opinion influences immigration stances; these stances determine immigration law; law shapes a country’s immigration regime; and finally, a country’s immigration regime will affect its immigration.

Distinguishing between these five objects of analysis is of major benefit. In allowing the analyst to frame with greater precision and clarity a number of central puzzles in the literature, it should thereby prevent the kind of analytic ambiguity reflected by the variety of ‘gaps’ referred to previously. At the same time, it is important to appreciate the continuing value of the term ‘immigration policy’, which (as in Figure 2) informs and integrates the central phenomena of our subject: stances, law, and implementation. Indeed, there will be instances where an analyst may wish to take advantage of this broad meaning of the term, to refer to any two, or all three, of its component parts. For the purposes of this thesis, I use the term to capture *all three* facets of immigration policy.

Referring to the conceptual framework, but excluding *immigration policy effects*, we can see that each of its five elements can be linked to the other four, thus forming ten ‘pair-relations’ in total. As depicted in Figure 3, these represent ten distinct ‘gaps’, each of relevance to immigration policy, its determinants, and its effects. It is interesting to note that in the literature, at least nine of these gaps have been said by authors to constitute *the* “gap hypothesis” or some other ‘gap’ that is comparably puzzling, theoretically significant, or politically important.

²² I include stances because they can affect migration even if they do not lead to a change in the law, by, for example, dissuading would-be migrants from coming to the UK.

It is vitally important to recognise here that each of these ten gaps asks a *different question*. As such, each gap may be explained by different sets of variables. By way of example, consider a country that substantiates the original gap hypothesis. It has a highly restrictive net migration target that is missed by ever greater margins. To explain this discrepancy, we might suppose that the proclaimed target had not in fact led to the *enactment* of restrictive legislation, or that restrictive immigration laws had not been *enforced* effectively, thereby producing an immigration regime that was more liberal *in practice*.

That line of reasoning makes good intuitive sense. By contrast, it would seem misguided to respond to the puzzle of this gap by proposing that public opinion on immigration had something to do with it, and hence that to solve the mystery we should endeavour to understand the causes of popular xenophobia. That strikes one as much less plausible. However, if we are to explain the puzzle of Freeman's gap, the discrepancy between a restrictionist citizenry and expansionary laws, then public opinion would certainly be of interest. It might be the case, for example, that a factor, *X*, is solely responsible for the public backlash against immigration. Knowing that *X* is the cause, and removing it, would hence dissolve the gap.

The conceptual discrepancies between our ten gaps may, of course, not always be this striking and may sometimes be quite small or share the same explanatory variables. However, it is important to bear in mind that *every one* of the gaps invokes different sets of phenomena as their likely determinants. Yet, few studies can be said to demonstrate an assured awareness of what are the most likely explanations for the 'gap' that they themselves specify.

To clarify where our analysis stands, Table C lists these ten gaps, and illustrates each one with examples found in the literature. Some of the definitions cited, when read in isolation from their source text, can appear somewhat ambiguous. Where this is the case, I have used a close reading of the source text to reach a reasonable interpretation of the author's intentions and so resolve any such ambiguity. I also provide in the table what I consider to be the source of each gap's most likely explanatory variables: 'explanatory foci'. Interestingly, though, individual studies seldom identify, still less analyse, *all* of what I consider to be the most intuitive and probable explanations for the particular 'gap' they have chosen to examine.

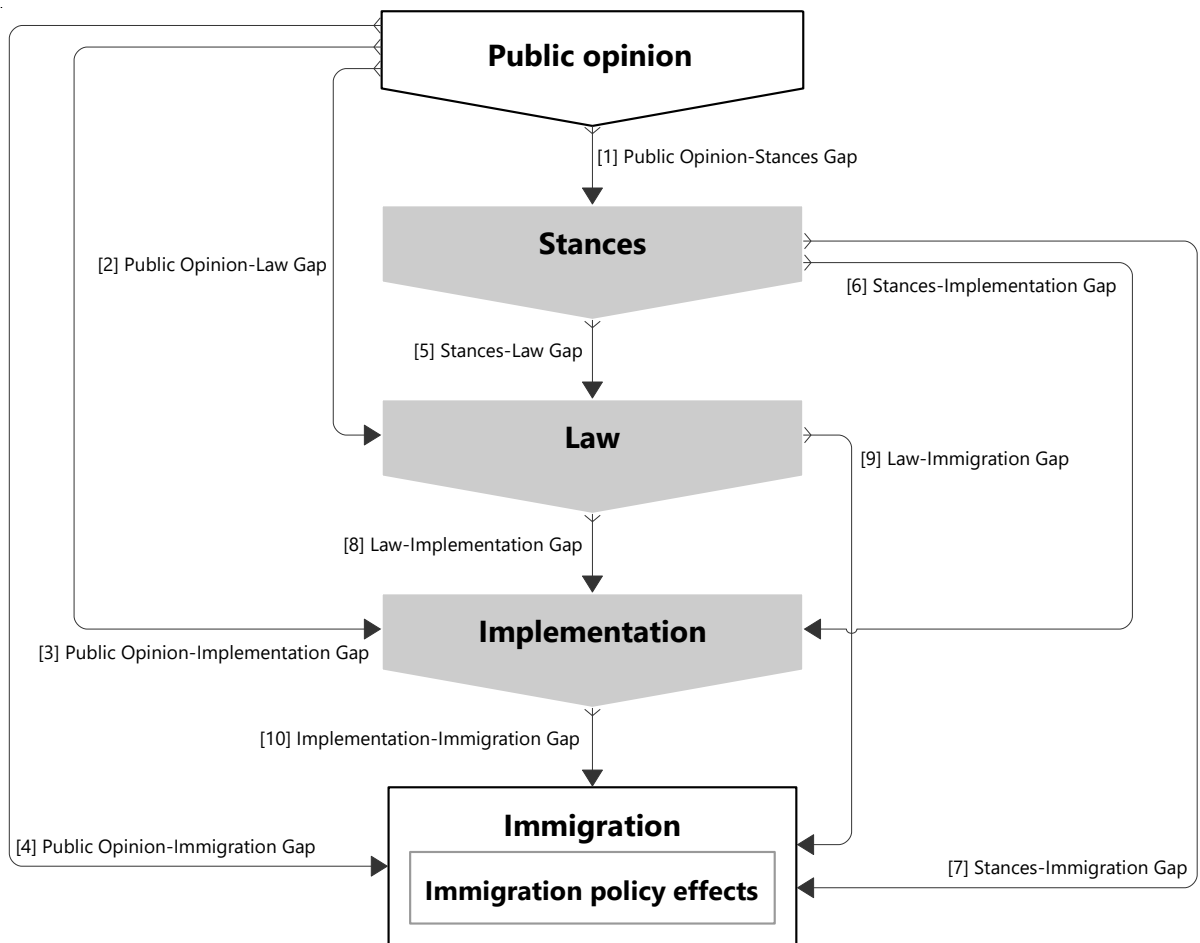


Figure 3 Conceptual framework of immigration policy with ten gaps

Table C Immigration policy-making in liberal democratic states: ten gaps with links to the research literature

Gap <i>Also known as</i>	Definition(s)	Likely explanatory foci
[1] Public Opinion-Stances <i>Public opinion gap</i> (Facchini and Mayda, 2009)	<ul style="list-style-type: none"> ▪ Facchini and Mayda (2009: 2) “We document a “public opinion gap”, i.e. a gap between very restrictionist public opinion on one side, and more open stated policy goals on the other.” ▪ Davis (2012: 3) “The thesis centres around three main themes: (1) The ‘gap’ hypothesis which poses that party positions on immigration do not correspond with voter preferences...” 	<ul style="list-style-type: none"> ▪ Public anti-immigration preferences and their drivers ▪ Policy-makers’ rhetoric on immigration ▪ Policy-makers’ responsiveness to public opinion
[2] Public Opinion-Law <i>Freeman’s gap</i> (Freeman, 1995a)	<ul style="list-style-type: none"> ▪ Freeman (1995a: 883) “Nevertheless, I want to argue that there is in general an expansionary bias in the politics of immigration in liberal democracies such that official policies tend to be more liberal than public opinion and annual intakes larger than is politically optimal.” ▪ Freeman (2002: 88) “The central puzzle of the politics of immigration in liberal democracies is the large and systematic gap between public opinion and public policy.” ▪ Statham and Geddes (2006: 248) “Freeman has arguably gone furthest in developing a theoretical model to explain the purported paradox or ‘gap’ between expansionist policies and restrictive publics.” ▪ Boswell (2007: 78) “Recent literature on the theory of migration policy has tended to be dominated by two overlapping themes: the question of why migration policies fail; and attempts to explain the inclusionary tendency of migration and integration policies. While the two issues are often treated together – and may indeed be similarly theorized – they are in principle separable. ... The second theme is concerned with explaining the gap between the generally protectionist bent of public opinion in democratic states, and the more inclusionary policies that often emerge.” ▪ Rosenblum and Cornelius (2012: 245) “[this chapter] concludes by reevaluating two hypotheses from previous research (Cornelius et al. 1994; Cornelius et al. 2004; Hollifield et al. forthcoming): the “convergence” hypothesis, which predicts that diverse migrant-receiving countries are moving toward common policy modes, and the “gap” hypothesis, which predicts a divergence between popular demands for tight migration policies and less restrictive immigration policy outputs and outcomes.” 	<ul style="list-style-type: none"> ▪ Public anti-immigration preferences and their drivers ▪ Policy-makers’ rhetoric on immigration ▪ Policy-makers’ responsiveness to public opinion ▪ Interest group influence ▪ Liberalist constraints on policy-makers (e.g., from the judiciary, bureaucracies, international human rights norms)

Table C Immigration policy-making in liberal democratic states: ten gaps with links to the research literature

Gap <i>Also known as</i>	Definition(s)	Likely explanatory foci
[3] Public Opinion-Implementation	<ul style="list-style-type: none"> ▪ Jeong (2013: 600) “...this article sheds light on a puzzling aspect of immigration policy – namely, the gap that exists between public opinion and legislative outcomes.” ▪ Consterdine (2015a: 1434) “Labour’s managed migration policy is a pertinent example of the ‘gap hypothesis’ (Cornelius, Martin, and Hollifield 1994) – the seeming mismatch between public demands to limit immigration on the one hand and expansive policies on the other hand – as there was no public demand for expansion, indeed quite the opposite.” 	<ul style="list-style-type: none"> ▪ Public anti-immigration preferences and their drivers ▪ Policy-makers’ rhetoric on immigration ▪ Policy-makers’ responsiveness to public opinion ▪ Interest group influence ▪ Liberalist constraints on policy-makers (e.g., from the judiciary, bureaucracies, international human rights norms) ▪ Implementation of immigration law (e.g., management of administration and enforcement agencies; budgetary constraints; officials’ discretion)
	<i>None found</i>	
[4] Public Opinion-Immigration <i>Populist gap</i> (Boswell, 2003)	<ul style="list-style-type: none"> ▪ Boswell (2003: 4) “This has created what I term the ‘populist gap’: a gap between what can feasibly be done to restrict migration in liberal democracies and the often unrealistic and ethically unacceptable demands of populist politics.” ▪ Somerville (2010: 951) “Recent migration literature has been dominated by the question of why migration policies fail (Boswell, 2007) and in particular one of the central puzzles of immigration scholarship – the seeming mismatch, or ‘gap’ (see Cornelius <i>et al.</i>, 2004), between public demands to limit immigration (together with the ‘control’ rhetoric of politicians) and the reality of an increasing volume of immigration.” ▪ Rosenblum and Cornelius (2012: 245) “[this chapter] concludes by reevaluating two hypotheses from previous research (Cornelius et al. 1994; Cornelius et al. 2004; Hollifield et al. forthcoming): the “convergence” hypothesis, which predicts that diverse migrant-receiving countries are moving toward common policy modes, and 	<ul style="list-style-type: none"> ▪ Public anti-immigration preferences and their drivers ▪ Policy-makers’ rhetoric on immigration ▪ Policy-makers’ responsiveness to public opinion ▪ Interest group influence ▪ Liberalist constraints on policy-makers (e.g., from the judiciary, bureaucracies, international human rights norms) ▪ Implementation of immigration law (e.g., management of administration and enforcement agencies; budgetary constraints; officials’ discretion) ▪ Drivers of immigration (‘push’ and ‘pull’ factors)

Table C Immigration policy-making in liberal democratic states: ten gaps with links to the research literature

Gap <i>Also known as</i>	Definition(s)	Likely explanatory foci
	the “gap” hypothesis, which predicts a divergence between popular demands for tight migration policies and less restrictive immigration policy outputs and outcomes.”	
[5] Stances-Law <i>Discursive gap</i> (Czaika and de Haas, 2013)	<ul style="list-style-type: none"> ▪ Menz (2008: 4) “The “gap” between restrictionist rhetoric and slightly more permissive practice...” ▪ Czaika and de Haas (2013: 494) “...the <i>discursive gap</i>, or the discrepancy between public discourses and policies on paper...” 	<ul style="list-style-type: none"> ▪ Policy-makers’ rhetoric on immigration ▪ Interest group influence ▪ Liberalist constraints on policy-makers (e.g., from the judiciary, bureaucracies, international human rights norms)
[6] Stances-Implementation	<ul style="list-style-type: none"> ▪ Bruquetas-Callejo, Garcés-Masareñas, Penninx and Scholten (2011: 153) “Another similarity, related to this politicisation, concerns the growing gap between policy discourse and policy practice.” 	<ul style="list-style-type: none"> ▪ Policy-makers’ rhetoric on immigration ▪ Interest group influence ▪ Liberalist constraints on policy-makers (e.g., from the judiciary, bureaucracies, international human rights norms) ▪ Implementation of immigration law (e.g., management of administration and enforcement agencies; budgetary constraints; officials’ discretion)
[7] Stances-Immigration <i>Gap hypothesis</i> (Cornelius <i>et al.</i> , 1994; Cornelius and Tsuda, 2004)	<ul style="list-style-type: none"> ▪ Hollifield (1986: 114) “This article focuses on the changes in immigration policy in France and Germany in the 1970s. Particular attention is given to explaining the gap that has developed between policies – outputs – and the results of the policies – outcomes – in each country.” ▪ Freeman (1992: 1155) “Public concern has been heightened because of the gap between the official closed door policy and the reality of expanding migrant communities in Europe.” ▪ Cornelius, Martin and Hollifield (1994: 3) “...we argue that the gap between the <i>goals</i> of national immigration policy (laws, regulations, executive actions, etc.) and the actual results of policies in this area (policy <i>outcomes</i>) is wide and growing wider in all major industrialized democracies, thus provoking greater public hostility towards immigrants in general (regardless of legal status) and putting intense pressure on political parties and government officials to adopt more restrictive policies. We refer to this as the “<i>gap hypothesis</i>.” 	<ul style="list-style-type: none"> ▪ Policy-makers’ rhetoric on immigration ▪ Interest group influence ▪ Liberalist constraints on policy-makers (e.g., from the judiciary, bureaucracies, international human rights norms) ▪ Implementation of immigration law (e.g., management of administration and enforcement agencies; budgetary constraints; officials’ discretion) ▪ Drivers of immigration (‘push’ and ‘pull’ factors)

‘Gaps’ in the literature

Table C Immigration policy-making in liberal democratic states: ten gaps with links to the research literature

Gap <i>Also known as</i>	Definition(s)	Likely explanatory foci
	<ul style="list-style-type: none"> ▪ Joppke (1998a: 266) “The phenomenon of unwanted immigration reflects the gap between restrictionist policy goals and expansionist outcomes.” ▪ Freeman (2002: 77-78) “The gap hypothesis, on the other hand, suggests that the distance between the goals of policies and their effects is large and growing larger in all the industrialized countries.” ▪ Cornelius and Tsuda (2004: 4) “We retain the two central theses used to organize the first edition. The first, which we call the “<i>gap hypothesis</i>,” is that significant and persistent gaps between official government policies and actual policy outcomes.” ▪ Boswell (2007: 78) “Recent literature on the theory of migration policy has tended to be dominated by two overlapping themes: the question of why migration policies fail; and attempts to explain the inclusionary tendency of migration and integration policies. While the two issues are often treated together – and may indeed be similarly theorized – they are in principle separable. The first deals with the gap between (proclaimed) policy objectives and outcomes.” 	
[8] Law-Implementation <i>Enforcement gap</i> (Cornelius and Rosenblum, 2005) <i>Implementation gap</i> (Czaika and de Haas, 2013)	<ul style="list-style-type: none"> ▪ Cornelius and Rosenblum (2005: 113) “Much of this recent work seeks to explain the unmet demands for migration control (i.e., the “enforcement gap”), primarily by focusing on interest group dynamics and/or political institutions.” ▪ Czaika and de Haas (2013: 496) “The implementation gap is the discrepancy between policies on paper and their actual implementation.” 	<ul style="list-style-type: none"> ▪ Implementation of immigration law (e.g., management of administration and enforcement agencies; budgetary constraints; officials’ discretion)
[9] Law-Immigration	<ul style="list-style-type: none"> ▪ Cornelius and Rosenblum (2005: 100) “Although the recent gap between formally restrictive policies and de facto permissiveness in the immigration domain...” 	<ul style="list-style-type: none"> ▪ Implementation of immigration law (e.g., management of administration and enforcement agencies; budgetary constraints; officials’ discretion) ▪ Drivers of immigration (‘push’ and ‘pull’ factors)
[10] Implementation-Immigration <i>Efficacy gap</i> (Czaika and de Haas, 2013)	<ul style="list-style-type: none"> ▪ Czaika and de Haas (2013: 497) “...the <i>efficacy gap</i> reflects the degree to which the implemented laws, regulations, and measures have the intended effect on the volume, timing, direction, and composition of migration flows.” 	<ul style="list-style-type: none"> ▪ Drivers of immigration (‘push’ and ‘pull’ factors)

The two main gaps in the literature on immigration policy-making

Now that we have clarified what it is we mean by immigration policy, having disaggregated the concept into three empirically separate aspects – stances, law, and implementation – we can return to the puzzles at the heart of immigration policy research, as expressed by the various definitions of the gap hypothesis. Now, however, we can give these puzzles a more precise, hence clearer, formulation, and hence frame more exactly the central concern of this thesis.

There are two ‘gaps’ that have been most prominent in the literature, and which are also the most relevant to the present study. These are the pair of subtly different gaps identified by Freeman (2002: 78) and Boswell (2007: 75-76). The first is the discrepancy between politicians’ restrictive immigration policy objectives and an increasing volume of immigration. According to the terms of my conceptual framework, this is the *stances-immigration gap*. This is equivalent to the original conception of the gap hypothesis, excepting that definition’s inclusion of immigration law and at least one manifestation of its implementation (“executive actions”).

When viewed through the lens of my conceptual framework, the puzzle of the *stances-immigration gap* can be seen to comprise several of the other gaps, included in Table C. These can be conceived as ‘sub-gaps’ of the *stances-immigration gap*, each of which poses a narrower puzzle. Three of these are especially pertinent: the *stances-law gap*, which is the gap between restrictive government stances and more liberal immigration laws; the *law-implementation gap*, which is the gap between restrictive immigration law and the more liberal immigration regime that results; and the *implementation-immigration gap*, which arises from the observation that a country with a restrictive immigration regime nevertheless exhibits large-scale immigration. Thus, explanations of the *stances-immigration gap* may contain explanations for each of the following puzzles: why politicians’ tough rhetoric is not matched by the laws they pass; why immigration laws are so poorly enforced; or why a country’s strict immigration regime cannot prevent mass immigration.

The other most important gap in the literature is what may be termed the *public opinion-law gap*, that introduced by Freeman (1995a). In the UK for the period under study, this may be expressed as the gap between the aggregate of UK citizens’ attitudes towards immigration – specifically, the majority view that it should be reduced – and immigration law, which is hypothesised to be less restrictive than the Coalition government wants it to be.

This second gap, like the previous *stances-immigration gap*, encompasses the *stances-law gap*. Here, the two main gaps overlap, both being concerned with the subordinate puzzle of why there is a difference between a government’s proclaimed legislative goals and the law on the books. This second gap is also concerned with the correspondence between public opinion and policy-makers’ stances, the latter including their rhetoric and proclaimed goals.

A merit of this second gap is its narrower focus. As Boswell observed, being more narrowly drawn it raises “questions which may be obscured if we treat it as a subset of the first [gap]”, adding that it “implies a more narrow focus on the configuration of interests, ideas, and institutions that shape policy” (2007: 75). Additionally, from the perspective of immigration policy theory, it is the second of these gaps that is by far the more relevant. It is also, therefore, the more relevant to this investigation.

By contrast, if we reflect upon the puzzle of the first gap, the *stances-immigration gap*, we notice it has come frequently to be formulated as one of two questions: why do migration policies fail? (Castles, 2004); and why do states accept unwanted immigration? (Joppke, 1998a: 266). In turn, the answers to these questions have been *manifold*. As Boswell says, “there are any number of theories” that seek to answer these questions (2007: 75). This observation is certainly supported by the contents of Table C, which shows six plausible explanatory foci for the puzzle posed by this gap.

It should come as no surprise, therefore, that in view of the discussion so far, the present study aims to contribute to explanations of Freeman’s narrower gap. First, though, what does the research literature tell us about the causes of this *public opinion-law gap* in liberal democracies? That is the subject of our next chapter.

3 Explaining the *public opinion-law gap* – a review of the research literature

Explanations of the *public opinion-law gap* – the disjuncture between highly restrictionist public opinion and more liberal immigration law – typically assert that national governments endeavour to reflect their publics' preferences for restrictive immigration reforms, but are persuaded or prevented from doing so by *sources of pressure* to *liberalise* immigration law. More specifically, this pressure aims at liberalising *existing* immigration law, or loosening the *proposed* legislative restrictions of the executive.

There are, say researchers, two main sources of this liberal pressure (Boswell, 2013). The first comprises *organised interest groups* that seek to persuade policy-makers to make immigration law less restrictive. These include the business lobby, trade unions, and advocacy groups like Liberty. The researchers that have done most to explore this influence have applied political economy approaches, and argue that lobbying success is underpinned by a powerful economic logic, whereby the *concentrated* organised interests of lobbyists to loosen immigration restrictions tend to outweigh the *diffuse* collective interests of the public to restrict immigration.

The second source of pressure encompasses *liberal institutions and norms*, operating both *nationally* and *extra-nationally* (i.e., internationally or supranationally). These derive, respectively, from the internal structural features of liberal democratic states, and from the relationships between such states. At the national level, they include written constitutions and constitutional arrangements and conventions; national judiciaries; and bureaucracies with entrenched liberal cultures. At the extra-national level, they include international relations and “embedded liberalism” (Hollifield, 1992a: 26-37); international norms on human rights; global capitalism; and supranational institutions such as the European Union.

Collectively, these influences are known by the term “liberal constraint” (Hollifield, 1992a: 94). This is because they emanate from features of the liberal democratic state, and perhaps because they are liberal in their effect, constraining the restrictionist bent of the executive's stances on immigration. The core of the ‘liberal constraint’ argument here is that national policy-makers have lost the capacity to enact their preferred immigration laws. Joppke (1999) uses the term “self-limited sovereignty” to describe a similar trend, though he identifies only domestic liberal constraints, not extra-national ones.

To situate this study within its appropriate scholarly context, in this chapter I review the arguments relating to the role of both organised interest groups and the liberal constraint in shaping immigration law. I then explore what scholars have said about that other potential liberal constraint: the national legislature.

Organised interest groups

By far the most-cited explanatory theory of immigration law, aimed at explaining the *opinion-law gap*, has been that of Gary P. Freeman (1995, 2002), who is credited with being the *first* to offer a comprehensive explanation of this particular gap (Somerville and Goodman, 2010: 951). Freeman's argument was startling. He disputed the orthodox view that immigration law-making in liberal democracies, especially those of Western Europe, was highly restrictive, driven by populist politicians seeking electoral advantage by appealing to voters' anti-immigration proclivities. Instead, he argued that since World War Two the dynamics of immigration law-making in liberal democracies had been "broadly expansionist and inclusive" (1995: 881).

Freeman attributed these liberalising dynamics principally to the actions of organised interest groups, such as human rights organisations and employers. These groups lobby executive elites, seeking to persuade them to loosen immigration restrictions and implement more inclusive laws. Adopting a term from James Q. Wilson (1980), Freeman labels this mode of policy-making "client politics" (1995a), which he characterises as:

a form of bilateral influence in which small and well-organized groups intensely interested in a policy develop close working relationships with those officials responsible for it. Their interactions take place largely out of public view and with little outside interference. Client politics is strongly oriented toward expansive immigration policies.

Although Freeman was not the first to argue for the influence of interest groups in immigration law-making (see Divine, 1957; Craig, 1971; Shughart *et al.*, 1986; Simmons and Keohane, 1992; Ireland, 1994), he did provide the first comprehensive theory from the perspective of political economy, which led him to the following insight (1995a: 885), explaining how policy-makers come to be influenced by the lobbying efforts of organised interests:

If one assumes that [the state actors that make policy] are vote-maximizers, then one predicts they will respond to the organized pressure of groups favorable to immigration, ignoring the widespread but poorly articulated opposition of the general public.

While it is reasonable to assume that elected politicians are vote-maximisers, why should they respond to the pressures of interest groups, which constitute only a small proportion of the electorate? Surely, in following a vote-maximising logic, politicians would court the votes of the general public, which comprises almost the entire electorate. Freeman's apparent answer to this theoretical pitfall lies in what he claims is the presence of a "strong antipopulist norm that dictates that politicians should not seek to exploit racial, ethnic or immigration-related fears in order to win votes" (1995a: 885). The extent to which this norm actually prevails has been questioned (Brubaker, 1995), but if Freeman were right on this point his policy-makers would be more *normative agents* than vote-maximisers. Strikingly, this apparent tension in Freeman's argument has, to my knowledge, never been pointed out. Of course, this does not mean that interest groups are not influential in shaping immigration law, only that Freeman's posited psychological mechanism is implausible.

A number of works (Hanson and Spilimbergo, 2001; Watts, 2001; Haus, 2002; Amegashie, 2005; Facchini and Mayda, 2008, 2009; Menz, 2008; Facchini, Mayda and Mishra, 2011) would subsequently adopt and extend Freeman's analysis, developing his essential thesis that interest groups are central to immigration policy-making in Western democracies. But is this supported by the evidence? In a more recent publication (Freeman and Tendler, 2012: 325), Freeman himself concludes that the evidence is anything but strong:

...one might anticipate that immigration politics in liberal democracies would be quintessentially the politics of organized groups. Surprisingly, this claim has been only weakly substantiated with empirical data and has been challenged by some scholars. Students of European immigration politics in particular have criticized interest group models as inapplicable to most European cases... (Geddes 2003, 21; Joppke 1999; Statham and Geddes 2006).

However, we should not reject the 'client politics' model just because it has not found extensive empirical support. After all, such influence is likely to be difficult to measure. As Freeman notes, interest groups work "quietly in tandem with policy makers to promote their favoured policies while most of society pays little or no attention" (2002: 80-81). In any case, Freeman is perhaps overmodest about the empirical support for his theory. In a

study of the United States, Facchini *et al.* (2011) adduce compelling evidence of interest group influence, a view supported by Messina with respect to post-war Europe (2007: 239-241).

However, to Freeman's theory we may add an important qualification from Cornelius and Tsuda, namely that the "interest-group politics model tends to explain more of the variation in immigration policy-making in the 'classic countries of immigration' (the United States, Canada, and Australia) than in the 'reluctant' labor importers (Western Europe, Japan), where the pro-immigration lobby is much less entrenched" (2004: 12). As Somerville and Goodman also note (2010: 956), this position is certainly in keeping with the "vast majority of commentators on UK migration policy", who "barely mention the possibility that interest groups, or policy networks inclusive of non-state actors, have influenced policy" (see, for example, Hammar, 1985; Spencer, 1997; Hansen, 2000). Joppke is equally unequivocal on this point: "In Great Britain, where immigration policy was from the start a restrictive policy to shut down unsolicited post-colonial immigration, immigration policy never was client politics" (1998b: 18).

By contrast, however, Somerville and Goodman present a more ambivalent picture, made possible by their disaggregation of immigration policy into three areas: economic migration, asylum, and integration. Their study of UK immigration policy between 1997 and 2007 confirmed that an elite-led, powerful executive was responsible for *asylum* policy development; but that for *economic* migration policy the business lobby played an important role; while a diffuse network encompassing local and national government actors was involved in *integration* policy-making (2010).

Although my own research into the role of the legislature did not set out expressly to test the centrality of interest groups to the UK's immigration law-making, its close empirical examination of Parliament's legislative process may well uncover evidence that speaks to this question. With that said, this thesis may be said to be most closely associated with a different literature: that which analyses the 'liberal constraint'.

Sources of the 'liberal constraint'

The idea of the 'liberal constraint' may be traced to Hollifield's path-breaking account of the political and economic factors that drove the rise of immigration in post-war Europe and the United States (1992a: 94). As previously mentioned, this concept relates to sources of pressure that aim to liberalise immigration law, whether existing or proposed. However, to those unfamiliar with the research literature on immigration policy-making, the term is

liable to mislead, in two respects. First, it could be taken to mean that the constraint itself is liberal, and hence that it is loose, weak, or sets wide limits for compliance. That interpretation is sure to confuse. After all, how can a constraint be liberal when a constraint is *by definition* restrictive? Second, it could be thought to refer to a constraint *on* something liberal. This inverts the intended meaning of the concept, which refers to a constraint *on restrictive* immigration policy.

To avoid such ambiguity and hence make these erroneous interpretations less likely, I propose a replacement term: *liberalist constraint*²³. In so doing, I recognise that those who conduct research into immigration policy need not remind each other that the ‘liberal constraint’ *is* a constraint, specifically a constraint upon illiberal immigration stances, with a view to moderating their restrictiveness. Equally, immigration researchers will know that the liberal constraint does not act to restrict something liberal. Yet, although this revision will be unnecessary for the specialist reader – and worse, might cause confusion were they to mistakenly think that the change denotes a new concept – I would nevertheless suggest that this does not mean we should use ambiguous terminology if we can help it. It is in that spirit that I adopt the term ‘liberalist constraint’ for this thesis.

With our terminology clarified, we may now turn to the liberalist constraints that have been uncovered by researchers, which, they have argued, operate at both national and at extra-national levels. The former encapsulates two sources: national judiciaries and state bureaucracies; while the latter encompasses four: “embedded liberalism”; international human rights norms; global capitalism; and supranational institutions, such as the European Union. Each of these sources is dealt with in turn.

The national judiciary

Our first domestic liberalist constraint comes from national judiciaries. The researcher perhaps best known for this argument is Joppke (1998a; 1998b; 1999; 2001; Joppke and

²³ In general, the suffix ‘-ist’ means “of, relating to, or characteristic of” (Merriam-Webster), and is used to form nouns and adjectives that describe a particular set of beliefs or way of behaving. Here it modifies the adjective ‘liberal’ to make clear that by ‘liberalist constraint’ we do not mean that the constraint itself is liberal (i.e., weak – our first misinterpretation); and nor are we referring to a constraint *on* something liberal (the second misinterpretation). Rather, we are labelling something that is *of, related to, and characteristic of*, liberalism and the liberal democratic state, namely, their norms and institutions.

Marzal, 2004). However, it was in 1994 that authors first recorded the emergence of a form of “liberal republicanism” within the democratic polity, especially in “judicial rulings” that had resulted in “expanded rights for marginal and ethnic groups, including foreigners” (Cornelius *et al.*, 1994: 9).

Joppke’s research was inspired by the observation that while liberal states seemed to have little success in curtailing immigration, the immigrant-receiving states of the oil-producing Middle East had no such trouble (a pattern identified in Weiner, 1995: 80-83). This led him to the idea that it was perhaps some characteristic feature of liberal democracies that prevented them from curbing their immigration. Ultimately, Joppke identified that feature as the *legal systems* of these nation-states. These, he concluded, constituted an important “source of expansiveness toward immigrants” (1998a: 271), especially via an “activist judiciary invoking constitutional norms to curtail the restrictionist policy intentions of the executive” (1998b: 18). This is possible, he maintained, because judges, unlike politicians, are not chronically vulnerable to populist xenophobia. They are “generally shielded from such pressures”, beholden to only “the abstract commands of statutory and constitutional law” (1998: 271). As such, independent and liberalist courts regularly defy a restrictionist executive in upholding constitutional or statutory rights for immigrants, especially of residence and family unification, with their arguments bolstered by “domestic legitimacy discourses” (Joppke, 2001: 339). The judicial tail, suggested Joppke, wagged the legislative dog.

Virginie Guiraudon has corroborated Joppke’s arguments, and in some places has refined and extended them (1997, 1998a, 2001a, 2002). Based on detailed empirical research, she has been able to provide a more comprehensive list of liberalist legal constraints, which, “have developed since the 1970s in such a way as to constrain the restrictive objectives of migration control policy” and comprise: domestic constitutional principles such as ‘equality before the law’ and ‘fundamental rights’; general legal principles, including ‘due process’ and ‘proportionality’; and national jurisprudence and enacted laws (2000: 258).

However, although this liberalist constraint is to be found in Germany and the United States (Joppke, 1998a, 1999, 2001; cf. Neuman, 1990), as well as in France (Joppke and Marzal, 2004), it appears to have been largely absent in the UK. As Joppke explains, “In Britain, with no written constitution and deferential courts, there is very little self-limitation of the state” (1998b: 19; see also Joppke, 1999: 100-137; cf. Legomsky, 1987). This view is supported by Jacobson and Ruffer, who observe that, “The British political system has been one where...the courts were secondary, possessing very limited powers of judicial review”

(2006: 89). Based on these views, one might ask: in the UK, are there any liberalist constraints upon the restrictionist bent of the executive?

State bureaucracies

The importance of bureaucracies in immigration law-making was first proposed by Hammar in his influential comparative volume of post-war European immigration policy (1985). Informed especially by his chapter on Sweden (1985: 17-49), a country in which policy-making is markedly bureaucratised, Hammar proposed five explanations for the participation of state administrative agencies in immigration law-making (1985: 279-81). First, civil servants have more expertise than do elected policy-makers in the drafting of immigration law, a technically-complicated area. Second, political parties struggle to respond to the immigration question, the central issue of which is largely unfamiliar to them: how to divide the nation's 'economic pie' between citizens and non-citizens, rather than, as before, between members of the electorate. Third, there is no significant difference of opinion on immigration policy between countries' mainstream political parties. Fourth, it is politically risky for a party or politician to take a stand on an immigration issue. Fifth, a country's political parties often agree to allow their immigration policies to be led by the national interest, which, as for points three and four, effectively de-politicises the issue, thereby handing over responsibility for the drafting of immigration legislation to administrative agencies.

Hammar's arguments were to be investigated by Guiraudon, based on her comparative research of France, Germany, and the Netherlands (1997, 1998a, 2002, 2002). Across these studies, she sought to answer the puzzle of the *stances-law gap*: why social rights should come to be enjoyed by foreigners in Western Europe, given the restrictionist policy goals of governments. Guiraudon found that the *stances-law gap* could be explained in relation to the influence of state bureaucracy. She discovered that social rights, such as access to social welfare benefits, were granted behind closed doors in bureaucratic venues "biased in favour of equality before the law" (2002: 72). This, in concert with bureaucrats' proclivity to "standardise operations" and ease the administration of such benefits, produced a convergence of welfare rights for citizens and non-citizens alike (2002: 86). This discovery also helped Guiraudon explain why these rights were granted *before* political and civil rights, proposing that bureaucratic interventions were not possible for political rights, such as the

right to vote, because these typically require “constitutional reform or at least legislative debate” (2002: 72).

Returning to Hammar’s initial study, Guiraudon also provides strong empirical support for his fourth proposition, that politicians are wary of taking a stand on the issue of immigration. On this she concludes that political leaders, in deploying strategies to win electoral advantage, also attempt to avoid blame for the passing of unpopular reforms by shifting debate to bureaucratic venues that are “sheltered from electoral fallout” (2002: 86).

Based on these empirical studies one can appreciate that in European countries state bureaucracies have played a key role in shaping immigration laws. However, the extent to which they realise a comparable influence in the UK has yet to be established. Hitherto, the UK has not been the subject of similar research.

“Embedded liberalism”

As previously mentioned, four kinds of liberalist constraint are identified as having an extra-national origin. Our first is what Hollifield has labelled “embedded liberalism”, a term that he adopted from the political scientist John Ruggie (Hollifield, 1992a: 26; Ruggie, 1982). This describes the emergence after the Second World War of an international system of norms guiding the relations between, and legal conduct within, the nations of Western Europe and the United States. These norms were introduced informally through tacit rules that govern international relations, and are codified in conventions, treaties, and declarations. However, these norms are hardly neutral. Hollifield suggests they were developed at the behest of the hegemonic states of the OECD, especially the United States, motivated by this superpower’s interest in exporting a particular worldview (1992a). Irrespective of this interpretation, the outcome has been that rights for foreigners became *embedded* in the jurisprudence and political cultures of these societies.

For Hollifield, *embedded liberalism* can explain outcomes that other factors cannot. He suggests that the demonstrable failures of governments to meet their proclaimed goals to reduce immigration cannot be attributed solely to a lack of political will. Nor can they be fully explained by a focus upon the drivers of immigration, such as employers’ demand for foreign labour. Rather, he concludes, the *stances-immigration gap* is to be explained in substantial degree by refocusing attention upon explanatory factors invoked by the narrower focus of Freeman’s gap. These are to do with the *formulation* of immigration law, which, avers Hollifield, is influenced by political and economic factors that constrain policy-makers’ attempts to enact restrictive immigration legislation (e.g., 1986).

Critically, says Hollifield, these forces are bolstered by embedded liberalism. They stem from the international system, arising from the relations between, on the one hand, *international markets*, which are based on the liberal principles of free trade in goods, capital, services, and people; and on the other hand, *rights*, especially states' respect for fundamental human rights and associated constitutional norms and principles. Yet, although all of these factors originated from inter-state relations, they are expressed mainly *domestically* through the rule of law and due process, especially in the emergence of adversarial legal cultures that afford greater protections to minority groups from the arbitrary powers of the state and employers.

Accordingly, it would appear that the tenets of liberalism are securely embedded and that the rights that pertain to them are robust. As Hollifield comments, "If rights are ignored or trampled upon then the liberal state risks undermining its own legitimacy and *raison d'être*" (2004: 901-902). Moreover, rights that are located in a nation's fabric may also be augmented by those with a more international remit, though perhaps at the expense of national clout. Most especially, these rights are those emanating from the European Convention on Human Rights.

International human rights norms

The liberalist constraint provided by international norms concerning human rights was also prefigured in Hollifield (1992a; 1992b), but received its first detailed treatment by Yasemin Soysal in her influential book *Limits of Citizenship* (1994). Soysal's thesis is that the authority of nation-states to enact their desired citizenship laws, a major subset of immigration law, has been diminished by *transnational* norms on human rights and their associated institutions. More than this, she argued that the foundation for human rights, including those of immigrants, is increasingly found at the transnational rather than the national level. As such, the traditional notion of national citizenship is gradually being replaced by an emerging post-national citizenship.

Soysal labels this new form of citizenship "personhood". It is universal in character, transcending individual nation-states and individuals' national identities. Whilst personhood might seem like an abstract notion, says Soysal, it is anchored in concrete organisational forms and practices, especially those of collectivities, which in "advising national governments, enforcing legal categories, crafting models and standards, and producing reports and recommendations, promote and diffuse ideas and norms about

universal human rights that in turn engender a commanding discourse of membership” (1994: 152).

Support for the importance of international human rights in shaping immigration law has also come from the legal scholar, David Jacobson (1996; see also Jacobson and Ruffer, 2003, 2006); and Amy Gurowitz, who identified the importance of human rights norms in Japan, via their utilisation in political and legal discourse by domestic actors (1999). Of particular relevance to the present study is their observation, now corroborated by many researchers, that the principal institutional mechanisms by which international norms influence law are judicial and administrative – the two national sources of the liberalist constraint outlined above – and *not* those relating to the legislature (Jacobson and Ruffer, 2006: 26).

However, it would be fair to say that arguments regarding the role of international norms in shaping immigration law have been particularly controversial (see Joppke, 1998b; Guiraudon and Lahav, 2000). Three principal objections to the overlapping accounts of Soysal and Jacobson have been raised. First, they have failed to demonstrate empirically the impact of international human rights norms upon immigration policy-making (e.g., Freeman, 1998; Joppke, 1998b: 15). Second, there are good empirical grounds for believing that international human rights norms have little effect upon the content of enacted law (Martin, 1989; Koopmans and Statham, 1999). Joppke, for example, concludes that devoid of “hard legal powers”, the international human rights regime consists merely of the “soft moral power of discourse” (1998a: 296; see also Finnemore, 1996). Importantly, Joppke views the UK as the case that exemplifies this critique, evincing the “impotence” of international human rights norms “if not backed by a domestic bill of rights and independent courts” (1998: 141). Subsequently, Guiraudon and Lahav were to advance persuasive qualifications to this ‘post-national thesis’, based on their empirical examination of the power of human rights to influence immigration law across the EU (2000). They show how such norms are strictly limited in their scope, being “circumscribed to two specific areas: the right to lead a normal family life and the protection against inhuman treatment” (2000: 167).

The third criticism concerns the validity of the designation *international*. Insofar as such human rights norms explain the substance of immigration legislation, they do so essentially via the operation of norms and institutions *within* nation-states (Joppke, 1998, 1999: 264; Guiraudon and Lahav, 2000: 189; Hansen, 2002: 264; Statham and Geddes, 2006: 267). It is perhaps this last point that most alerts us to the need to examine the influence of international human rights norms nation-by-nation. In the case of the United Kingdom,

might one expect, following Joppke, there be more governmental rhetoric than action in relation to such norms?

Global capitalism

The idea that international markets place normative and institutional constraints upon national immigration law-makers is to be found in Hollifield (1992a, 1992b, 2004), though the researcher who has presented it most vigorously is Saskia Sassen (1996a, 1996b, 1999). In her understanding, the nation-state has been nothing less than “transformed” by the growth of the global economic system (1999: 177). However, in Sassen’s account global capitalism is only one of *several* interwoven elements implicated in what she terms the “de-facto transnationalism” of nation-states’ handling of immigration issues (1999). Most crucially, Sassen sees this process of de-facto transnationalism as encompassing a marked decline of state sovereignty in immigration law-making.

In Sassen’s argument economic globalisation features as a medial force and has a precise definition, referring to the formation of a “privatized regime for the circulation of service workers” that has resulted from the “privatization of public sector activities and of economic deregulation” (1999: 177). The result, says Sassen, is that “corporations, markets and free trade agreements are now in charge of ‘governing’ an increasing share of cross-border flows, including cross-border flows of specialized professional workers as part of the international trade and investment in services” (1999: 177). Thus translated to a country’s efforts to control immigration, this particular factor would certainly figure as a potentially significant constraint upon national immigration law-makers.

Supranational institutions

Our final source of the liberalist constraint is found in supranational institutions, to which the locus of immigration law-making is argued to have shifted. One of the first authors to emphasise the importance of supranational institutions in the granting of migrants’ rights was Soysal (1994). She identified supranational organisations as a major source of immigrant lobbying, arguing that these “work explicitly to redefine the identity and status of migrants at the European level” (1994: 112). In particular, she identifies the following supranational organisations as of primary importance in influencing the shape of citizenship and integration law: the Council of Associations of Immigrants in Europe (CAIEUROPE);

the Council of Europe; the European Community; and the Court of Justice of the European Community. To these Sassen added several further supranational institutions, to which “various components of state authority” in immigration law-making had been relocated: the European Union; the European Court of Human Rights; and the World Trade Organisation (1999: 177). These institutions, especially the EU, have since received greater scholarly attention under the rubric of the ‘Europeanisation’ of immigration policy or ‘EU legal integration’ (Bigo, 1996; Brochmann, 1999a, 1999b; Guiraudon, 2000, 2003; Lahav, 2004a; Lahav and Guiraudon, 2006; Luedtke, 2006: 419-441; Martiniello, 2006: 298-326; Messina, 2007: 150-151; Hampshire, 2013: 98-106).

The increased level of attention paid to this one supranational organisation would seem to confirm that, to no small extent, national decisions on immigration law are acquiescent to the ‘higher authority’ vested in the European Union. This theme chimes with the arguments exchanged during the UK’s Brexit debates – and logically with demands to return immigration control back to the country’s own legislature, unhampered by the liberalist edicts of the EU. It is to the role of the legislature in post-war immigration law-making that we now turn our attention.

The role of the legislature in shaping immigration law: a literature review

There is a large and varied research literature on the immigration law-making of the liberal democratic states of Western Europe and North America. Yet it has paid scant attention to the impact of the legislature and that of its constitutive actors, elected legislators. This dearth is reflected in the major literature reviews of immigration policy theories (Meyers, 2000, 2004; Lahav and Guiraudon, 2006; Boswell, 2007; Money, 2009; Bonjour, 2011; Zogata-Kusz, 2012). Between these six reviews, which collectively provide a comprehensive overview of the field, just a single direct reference is made to the national legislature (Money, 2009: 9), and then only to note one study’s dismissal of it as an important institution (namely, Rosenblum, 2003).

This seeming neglect in the literature of the legislature’s role in immigration law-making, is redressed to some extent in Boswell’s review article, albeit indirectly. In a discussion of the various institutions in which the source of the liberalist constraint may be located, Boswell discusses those which “derive force from constitutional provisions that institutionalize their autonomy” (2007: 83). These constitutional provisions include, “the separation of powers, independence of the judiciary, and so on” (83); and it is reasonable to

presume that “separation of powers” includes the national legislature, irrespective of whether or not it is referenced explicitly.

Nor does one find any reference in the six literature reviews to a specific national legislature. It is a telling illustration that in their identification of those social actors that they and other researchers have viewed as influential in immigration law-making, Lahav and Guiraudon include “organised interest groups, courts, ethnic groups, trade unions, law and order bureaucracies, police and security agencies, local actors and street-level bureaucrats and private actors” (2006: 207). Typically, their list does not include the national legislature; and in truth there is very little evidence in these literature reviews and elsewhere to suggest its warrant of greater scholarly prominence.

Even so, I would contend that there are certain studies in which the legislature’s peripheral treatment or even total disregard ought to have received careful consideration and subsequent justification. For example, researchers of states with strong parliamentary traditions ought at least to have explained, however briefly, the legislature’s absence from their study. However, this protocol has not been followed. By way of illustration, in an explanatory study of immigration policy-making in the Scandinavian countries, Gudbrandsen dismisses the legislature with a single remark: “The role of legislatures is not specified in the model” (2012: 20). This tends to exemplify the general lack of recognition of the potential role or importance of the legislature, notwithstanding its constitutional place within governments. Hence, in light of the widely-held view of this institution’s marginal role in immigration law-making, Gudbrandsen’s remark would be unsurprising, were it not for the very next sentence: “In cases of minority governments, which have been common in Scandinavia, legislatures may, however, change policies without going through the government” (2012: 20). An institution that possesses that kind of power – to change immigration law without the input or assent of the executive – ought not to be excluded from any explanatory model, let alone dismissed so lightly.

There is, however, one legislature that is perceived as possessing the power to substantially shape immigration law, leading to one category of study that defies this pattern of neglect: those of the United States.

The centrality of the United States legislature

Every major study of the immigration law-making of the United States has the country’s legislature, Congress, at centre stage. My review identified ten studies, which we can

categorise into two broad types. The first, and earlier, type of study is *historical-institutionalist*. These provide detailed narratives of the Congressional politics of US immigration reform, typically over many years or even decades. Four such enquiries are particularly noteworthy in advancing explanatory accounts in which Congress is a key causal variable (Goldin, 1994; Gimpel and Edwards, 1999; Tichenor, 2002; Togman, 2002). Significantly, the narrative in each of these four studies is a *legislative* one. The main players are legislators, senators, and presidents. Their main subjects are Congressional debates; coalitions struggling over legislation in the House of Representatives and the Senate; roll-call votes; and presidents' vetoes. Behind these legislative narratives are the shifting interests and coalitions of a variety of groups: organised and unorganised labour; owners of capital, including boards of trade and chambers of commerce; immigrants, both old and new; and rural America. The legislature provides the space for these coalitional struggles, with its institutional design shaping the political activities of government officials and lobbying groups.

An insight shared by these studies is that political institutions, including the legislature, are not merely neutral arenas for their political actors. Rather, the organisational structure of the national state and party system 'condition' political actors by providing "structural advantages for particular groups and activists to pursue their policy initiatives" (Tichenor, 2002: 45). A second theoretical insight is that macro-level forces, such as economic and cultural conditions, may influence immigration laws, but only *indirectly*. In other words, their impact comes via political institutions, which "act as intervening variables that determine which, if any, of these macro-level factors will influence immigration policies, and what that influence will be" (Togman, 2002: 12). These two insights have been especially fruitful in interpreting the findings of the present enquiry.

Less relevant, however, is the second kind of US study, which can be categorised as *quantitative*. These studies tease out statistical correlations between the previously mentioned macro-level societal factors, such as labour market conditions and ideological orderings and beliefs, and the voting patterns of legislators on immigration legislation (see, for example, Gonzalez and Kamdar, 2000; Banaian *et al.*, 2006; Fetzer, 2006; Milner and Tingley, 2009 [unpublished]; Facchini and Steinhardt, 2011). For most of these quantitative studies, however, it is the voting behaviour of legislators that is treated as the outcome or dependent variable, not actual immigration law (the only exception being Jeong, 2013). Moreover, the causal variables are not legislative, but social. In fact, in only three of these studies are variables related to the *legislators themselves* subject to analysis, and it is only these three studies included under the 'national legislature' in Table A. The subject of all these quantitative articles is not the influence of these legislators in shaping law, even

though the setting for this voting behaviour is the US legislature. Rather, these studies focus their attention on national-level sociological variables, especially those of an economic and ideological nature that are adjudged to operate within representatives' constituencies and thereby determine legislators' voting patterns, and hence the content of legislation.

In such studies, the *voting decisions of legislators* appear to be viewed as providing tangible, measurable form to macro-level forces. For that reason, these legislators are in effect portrayed as a kind of neutral medium through which larger economic and ideological factors operate. The role of Congress *as a legislative institution* is seldom discussed. Its political structure and dynamics are, it seems, irrelevant to this kind of research. The nature of the legislative impact of legislators, and of the legislature as an institution, is only ever implicit.

By contrast, the historical-institutionalist studies argue explicitly that the institutional structure of Congress significantly influences legislators: their goals; their perception of their interests; their sense of institutional responsibility; their power relations with other actors; and ultimately their behaviour, by making some courses of action more attractive or viable than others. These more qualitative studies demonstrate the legislators' impact upon legislation; and it is with these detailed qualitative analyses that the present study shares a methodological and theoretical affinity. I therefore take serious note of Zolberg's conclusion that, "However powerful, the effects of social forces, external or internal, are not automatically translated into policy outcomes but are mediated by established political structures...and political institutions – notably...the allocation of decision-making authority and power in the relevant sphere between the executive, the legislative, and the judicial branches of government" (1999: 86).

The marginality of European legislatures

A comparison of research on the United States with that on the nations of Western Europe reveals a marked difference with respect to the placement of the legislature within the constellation of immigration law-makers. Foremost among these differences is the attention that is afforded the institution. In studies of Western Europe, statements regarding the legislative branch of the state are sporadic. From a total of 253 pertinent sources, fewer than twenty-five referred to the legislature, and then only in passing. In addition, such studies are typically not substantiated through systematic empirical analysis, unlike those on the United States. That being said, within this literature there is sufficient comment from which

to tentatively propose the ‘consensus views’ with respect to the two main themes of this thesis:

- 1 The role of the legislature in shaping immigration law – whether its influence is significant or marginal.
- 2 The bent of the legislature with respect to immigration law – whether the direction of its influence, should it have any, is restrictive or liberal.

In all there are eight European countries, excluding the United Kingdom, for which explicit or indicative statements can be found regarding either the *importance* of the national legislature, whether significant or marginal; or its *bent*, whether restrictive or liberal; or both. These are Austria, the Czech Republic, France, Germany, the Netherlands, Poland, Sweden, and Switzerland. The statements made for each of these national case studies may be seen to coalesce, enabling a ‘consensus’ view to be discerned regarding the role or bent of its legislature, or both. These consensus views are presented in Table D, together with illustrative quotations.

Explaining the *public opinion-law gap*
– a review of the research literature

Table D The role of Western European legislatures in immigration law-making

	‘Consensus view’ of the legislature’s <i>importance</i>	‘Consensus view’ of the legislature’s <i>bent</i>
Western Europe	<i>Marginal</i> <ul style="list-style-type: none"> ▪ “[in post-war Europe] immigration policy was made in administrative contexts, without public participation and with little parliamentary supervision (Hammar, 1985: 277–87).” (Guiraudon, 1998a: 288) ▪ “Policy co-operation has strengthened national executive authority and weakened courts and legislatures at national and EU level because of the limited scope for scrutiny and accountability.” (Geddes, 2000: 207) ▪ “As Stone-Sweet (2000: 130) describes the outcome: ‘[T]oday judges legislate, parliaments adjudicate, and the boundaries separating law and politics – the legislative and judicial functions – are little more than academic constructions.’” (Joppke and Marzal, 2004: 825) 	<i>Restrictive</i> <ul style="list-style-type: none"> ▪ “...the judiciary, which may act as an institutional constraint on...the populist impulses of the legislature...” (Hollifield, 2000: 109-110) ▪ <i>With respect to voting rights:</i> “Granting voting rights to foreigners entails constitutional revision and thus legislative passage by a large coalition. This means that public discussion on the issue is almost inevitable and bound to be long and divisive as all sorts of larger debates (e.g. on the definition of the nation) will resurface, thus hampering chances for reform.” (Guiraudon, 1998a: 294) ▪ “In contrast to parties or parliaments, courts are shielded from democratic majority pressures.” (Joppke and Marzal, 2004: 824)
Austria	<i>Significant</i> <ul style="list-style-type: none"> ▪ “The parliamentarisation of migration policy in the mid-1980s combined with the reconfiguration of migration policy-making in the late 1980s and early 1990s caused the disappearance of the informal, non-public decision-making mechanisms so characteristic of social partnership in post-war Austria.” (Kraler, 2011: 52) 	<i>No relevant statement found</i>
Czech Republic	<i>Marginal</i> <ul style="list-style-type: none"> ▪ “The main debates over the creation of new acts among various governmental and non-governmental actors mostly took place before these acts entered the Parliament. This may be termed ‘closed-door’ policy-making done by civil servants and experts.” (Čaněk and Čížinský, 2011: 341) ▪ “Migration matters have not been politicised in the sense that Parliament has not had a major role in detailed discussions on the Foreigners and Asylum Acts.” (Čaněk and Čížinský, 2011: 341) 	<i>No relevant statement found</i>

THE LEGISLATURE IN IMMIGRATION POLICY-MAKING

Table D The role of Western European legislatures in immigration law-making

France	<i>Marginal</i>	<i>Liberal</i>
	<ul style="list-style-type: none"> ▪ “The decision-making process ... was kept out of the potentially divisive parliamentary arena ... the state has implemented its immigration policies via executive decrees and administrative circulars. In fact, between 1945 and 1980, not a single piece of legislation was passed in the National Assembly concerning immigrant entries (Wihtol de Wenden 1988:87).” (Togman, 2002: 16) ▪ As in Britain, essentially all control over the legislative agenda has been placed in the hands of the executive (president and prime minister).” (Schain, 2008: 37) ▪ “To sum up, the new configuration of the French decision-making process in the field of immigration is characterised as follows: employers and the government are deciding; Parliament obeys the government majority...” (Wihtol de Wenden, 2011: 91) ▪ <i>Though see:</i> “Throughout its immigration jurisprudence, the <i>Conseil</i> has insisted on this fundamental sovereignty principle that grants the legislature wider-than-normal discretion on immigration matters; only lately has the court begun to indicate certain limits to legislative discretion in this area.” (Joppke and Marzal, 2004: 830) 	<ul style="list-style-type: none"> ▪ “With each new legislature, additional groups within the National Assembly submitted antiracism bills, each modeled to a large extent on the early MRAP and Communist Party proposals. In response, however, the government continually – and with little political cost given low levels of pressure – blocked Parliamentary initiatives from being passed into law.” (Bleich, 2003: 127)
Germany	<i>Marginal</i>	<i>No relevant statement found</i>
	<ul style="list-style-type: none"> ▪ “...although members of the Bundestag opposition are highly proactive in employing oversight, the impact on executive decision-making is negligible.” (Ellermann, 2009: 95) 	
Netherlands	<i>Significant</i>	<i>Liberal</i>
	<ul style="list-style-type: none"> ▪ “...the process of policy-making – in the context of strong politicisation – is predominantly led, as well as set forth, by the Minister and the political parties in Parliament.” (Bruquetas-Callejo, Garcés-Masareñas, Penninx and Scholten, 2011: 150) 	<ul style="list-style-type: none"> ▪ “Dutch workers are entitled to two and a half years of benefits but nowhere in unemployment legislation was it stated that legally employed foreigners were a special category (Groenendijk 1980: 170). Intense lobbying by legal groups in Parliament succeeded in overturning this practice without going through the courts.” (Guiraudon, 1998a: 300)

Explaining the *public opinion-law gap*
– a review of the research literature

Table D The role of Western European legislatures in immigration law-making

Poland

Marginal

- “The government and central administration institutions formed the core of migration policy changes after 1989. The legislative authorities and courts were involved, but it was undeniably the government that took the lead in the policy-making process. Thus, the policy-making process itself turned out to be gradual and bureaucratic, involving a limited number of players.” (Kicinger and Koryś, 2011: 357)
- “... the lack of interest in migration shown by any political parties has led to Parliament’s role being reduced to a purely legislative one. Consequently, the involvement of Parliament in migration policy-making has not corresponded to its role in the state political system. Parliament did not offer a forum for discussion on policy goals or, for that matter, a place where interests could clash.” (Kicinger and Koryś, 2011: 361)

No relevant statement found

Sweden

Marginal

- “When I argue that immigration policy received a more precise formulation through parliament's decisions of 1968 and 1975, this suggests that parliament and the political parties determine immigration policy, which is of course true in a formal and legal sense. However, the major determinants of policy are the bureaucracy and interest groups, and not the political parties.” (Hammar, 1985: 44-45)

No relevant statement found

Switzerland

Marginal

- “...the Federal Government formulated and proposed the policy and the administrative agencies executed the measures taken to prevent passage of the over-foreignization initiatives. The Federal Parliament and the political parties played only a minor role in this process.” (Hoffman-Nowotny, 1985: 231)
- “...the other potential institutional veto points or veto players (both Chambers of Parliament and their respective committees, as well as the cantons) do not seem to have had much importance in the present case.” (Fischer, Nicolet and Sciarini, 2002: 155)

No relevant statement found

Table D The role of Western European legislatures in immigration law-making

-
- “In particular, in the area of migration policy, political processes and policy-making are dominated by pre-parliamentarian negotiations and direct democracy, while Parliament plays a secondary role (Mahnig 1996).” (D’Amato, 2011: 172)
-

This overview of the literature clearly indicates that national legislatures in Western Europe play a predominantly *marginal* role in shaping immigration law. It also suggests a simple explanation: they are believed to be weak. Only two countries, the Netherlands and Austria, are said to have legislatures that, in general, have played a significant role in shaping immigration law since the Second World War.

Statements on the *bent* followed by national legislatures, whether they make enacted legislation more liberal or more restrictive, are harder to come by, with statements on the Netherlands and France only. Furthermore, the three comments concerning Western Europe in general are only suggestive and inserted by their authors as asides, without theoretical or empirical grounding. Consequently, because statements on the bent of the legislature are so few and uncertain, such opinions ought not, perhaps, be described as embodying a ‘consensus’.

With respect to France and the Netherlands, those countries for which the balance of opinion implies a *liberal* role for the legislature, that opinion too must be qualified. It is based on isolated statements, which suggest that these Parliaments have acted to further immigrants’ rights at certain times and under certain circumstances. However, this position runs counter to statements regarding the bent of national legislatures in Western Europe *in general*, which indicate that the legislature is, or can be expected to be, restrictionist. The logic here is that *as a representative institution* it will tend to reflect populist preferences for immigration strictures.

What else have researchers said about the national legislatures of Western Europe? Although explicit statements about the legislature are relatively rare, one can draw reasonable inferences from tangential studies, notably those examining the impact of far-right political parties throughout Europe. These contain frequent references to national legislatures, even though they do not amount to clear analyses of their character. Particularly common are statements about the implications of far-right parties having won a small number of seats in Parliament. Whilst this does not empower them to exert direct legislative influence, it carries “symbolic” importance, enabling indirect influence (Schain, Zolberg and Hossay, 2002: 261). The very fact of their parliamentary presence endows them with a certain legitimacy and public prominence, from which they can exert influence over the immigration agenda and debate. From this, it may be inferred that national legislatures constitute an important public arena, which elevates legislators’ discourse to a higher plane of authority and prominence and thereby enhances their power to shape legislation through influence of the public debate.

However, it would be fair to conclude that this view of the legislature's role in Western European nations has not been reflected in the extant literature, which has tended to place the legislature at the periphery of immigration law-making and, where it has addressed its contribution, has typically done so in a perfunctory way. It is now appropriate to explore the literature that relates to the United Kingdom and to establish whether it treats the role of the legislature any differently.

The role of the UK Parliament in shaping immigration law

Unfortunately, the legislature has not been a focus of immigration policy research on the UK. That is not to say, however, that the UK Parliament is ignored in the literature. One finds recurrent references to parliamentary debates; parliamentary campaigns; parliamentary committees; Parliament's policy scrutiny; and Parliament passing Acts or rejecting proposals. What such references mean, though, for the role of Parliament in shaping immigration law, remains unclear, given an absence of accompanying analysis or argument regarding the significance of these phenomena for the legislation enacted.

By way of illustration, consider Money's study of UK immigration stance-formation and law-making (1997). Here one finds frequent references to Parliament, including "parliamentary debates"; a "parliamentary pact"; a "parliamentary campaign" against an immigration act; and an "all Party Parliamentary Select committee" that "called for stricter controls on entry as well as internal controls and a quota for the Indian subcontinent". Such debates, pacts, campaigns and committees call upon the labour of numerous Parliamentarians, many of whom will be highly specialised, especially if they are Peers. Surely all this effort, experience and expertise cannot be in vain?

Yet, except for the All-Party Parliamentary Select Committee, which Money tells us was "disowned by the Home Secretary" (1997: 709), which presumably precludes its having any legislative impact, little indication is given of whether these Parliamentary practices, processes, and procedures had any legislative effect. This is characteristic of studies that *mention* the UK Parliament (*discuss* is too strong a word because in most of these studies Parliament is not the author's main concern; e.g., Boswell, 2009b), and contrasts with the historical-institutionalist studies of the United States, of which there are no British equivalents.

Despite a lack of sustained analysis on the role and influence of the legislature, a consensus view prevails in the literature that Parliament exerts only *marginal* influence over the immigration laws it passes. Admittedly this consensus is deduced from very thin

material. The few statements researchers have provided on the role of the UK legislature are typically impressionistic or presented as asides without much supporting evidence or argument. Nevertheless, they do converge on the same picture. Parliament is presented as receiving legislation formulated by the executive, without having had any prior involvement in its determination (for example, Hammar, 1985: 20). Relative to the executive, it is “weak” (Hansen, 2000: 237, 244) and “largely subservient” (Geddes, 2000: 132). It is essentially a rubber-stamping institution. This depiction receives further support in a comparative volume on immigration policy-making in Europe (Zincone *et al.*, 2011), where the UK Parliament is depicted as being able to achieve only “small changes” to British immigration legislation, although the meaning and evidential base for this judgement is not elaborated on (Cerna and Wietholtz, 2011: 204).

Occasionally, one finds comments that run counter to the more explicit consensus view of the legislature having only marginal impact. However, these can be found only in statements that *imply* a position of influence for Parliament. For example, authors write of the passage of legislation through Parliament as “easy” (Favell, 2001: 165), or “stormy” (Hampshire, 2005: 26), or note that governments “faced a difficult time in the legislature” (Hampshire, 2005: 41). But explanations of how and why this is the case are not forthcoming. As such, one cannot escape the impression that the UK Parliament is looked upon as a largely passive body with respect to the formulation of proposed legislation, functioning as a neutral arena for the arguments and travails of political parties.

With regard to the *bent* of the Houses of Parliament towards immigration, of the few statements expressed most suggest restrictionist tendencies. Layton-Henry, for example, argues that Britain’s parliamentary system makes its government more responsive to xenophobic public opinion (2004: 297-333), a point supported by both Consterdine (2015: 1449) and Joppke, who notes that, “Parliamentary openness in the formulation of immigration policy keeps law-makers within the confines of a pervasively restrictionist public opinion” (1999: 103). However, Jennings suggests that the influence of public opinion is by no means absolute because “[t]he executive (Cabinet) controls the legislative process in Parliament, restricting the influence of public opinion” (2009: 849). Other statements seem more incidental and hence opaque. For example, Wright notes in passing that “the opposition parties did not use Parliament to obstruct the government’s major legislative initiatives” (2010: 128). From this, one might infer that Parliament can be manipulated into hampering or even blocking a government’s business. But one can only infer.

These patterns in the literature are shown in Table E, which provides a comprehensive sample of statements about the *importance* and *bent* of the UK Parliament in shaping immigration law. Overwhelmingly, it depicts a legislature that has very little clout over the executive and very little influence in the creation of immigration laws. This clearly poses a challenge for any study that might hope to shed any different light on the role of the UK legislature. However, before we can respond to this matter, we must first understand the basic nature of immigration politics and law-making in the British context. To do this, we must set it within an appropriate theoretical framework.

Explaining the *public opinion-law gap*
– a review of the research literature

Table E The UK Parliament in immigration law-making: a review of the research literature

Importance	Bent
<i>Significant</i>	<i>Liberal</i>
<p>Hampshire (2005: 41) “The Government faced a difficult time in the legislature, especially at the committee stage. In committee, an amendment was carried which effectively removed the grandparental concession and restricted the patriality clause to those with a UK-born parent.”</p> <p>Somerville (2010: 961) “The importance of this legal–business network in developing the content of UK migration policy cannot be underestimated. It had input at the parliamentary stage, the drafting of programme stage and in the implementation phase.”</p> <p>Wright (2010: 128) “While often expressing similar sentiments, the opposition parties did not use Parliament to obstruct the government’s major legislative initiatives.”</p>	<p>Bleich (2003: 124) “As early as the late 1940s, Parliamentarians had submitted legislative proposals to ban racial discrimination in the colonies.”</p>
<i>Marginal</i>	<i>Restrictive</i>
<p>Freeman (1979: 65) “In all of this, the 1971 Act seemed to push Britain closer to the French model of immigration control—an executive procedure based ostensibly on economic considerations, dominated by the strong political hand of the Home Secretary (the Minister of the Interior and the Minister of Labor, Employment, and Population in France) whose power of discretion, especially in the use of deportation, is quite wide.”</p> <p>Hammar (1985: 20) “Immigration policy in Britain is the product of a highly centralized and elitist political system. Policy is determined by the executive, legislated and legitimized by parliament, and administered by the bureaucracy or local authorities.”</p> <p>Joppke (1998a: 289) “In the orthodox view, Britain’s “political constitution” is good for democracy because it lets elected officials make decisions that, in other systems, unelected judges make. But in practice it entails executive, rather than parliamentary sovereignty, and it leaves minorities, with or without citizenship, extremely vulnerable to the whims of the majority.”</p> <p>Joppke (1998b: 132) “In reality, the sovereignty of Parliament is the sovereignty of the executive, with the Home Office the uncontested authority in immigration and asylum policy.”</p>	<p>Joppke (1999: 103) “Parliamentary openness in the formulation of immigration policy keeps law-makers within the confines of a pervasively restrictionist public opinion.”</p> <p>Consterdine (2015: 1449) “...Britain, where constituency MPs are more receptive to the (usually) anti-immigration preferences of their voters (Balch 2010, 21), and where the executive leads on policy in a fairly autonomous manner.”</p>

Table E The UK Parliament in immigration law-making: a review of the research literature

Importance	Bent	
Geddes (2000: 132) “In the UK, a strong executive, relatively weak courts and a largely subservient legislature have been a recipe for stringent immigration control legislation.”		
Hansen (2000: 237, 244) <ul style="list-style-type: none">▪ “...four factors ... distinguish the Westminster model from Continental Europe: a powerful executive, a weak legislature, a timid judiciary and an absence of a bill of rights.”▪ “The door to the Commonwealth closed so quickly because policy-makers faced few constraints on pursuing the tight immigration policy demanded by the public. A strong executive, weak legislature, and tightly constrained judiciary allowed governments to respond to public demands with a single-minded success unknown in the rest of Europe or North America.”		
Hollifield (2000: 110) “Separation of powers acts as a constraint on the ability of states to roll back civil rights and take away negative freedoms. In this respect, Britain has both an institutional advantage (no separation of powers) and an ideological/ cultural advantage (no republican tradition) in pursuing internal control strategies.”		
Favell (2001: 115) “With no written constitution or higher legislature to force successive governments to be consistent with the rules of the game, it has been easy and costless for politicians to use and trade on invented conceptions of the nation, both of a traditional or radical nature.”	<i>No more statements</i>	
Hossay (2002: 344) “The upper house, or House of Lords, traditionally consists of hereditary Peers and has very limited powers.”		
Bleich (2003: 107) “Between 1976 and the race laws of the past few years (discussed in Chapter 8), the source of British institutional developments [with respect to race relations] shifted away from Parliament to three other locations: the judiciary, local jurisdictions, and the bureaucracy.”		
Somerville (2007: 4-5) “There has also been a general acceptance in accounts of migration development that the ‘Westminster Model’ of government – a combination of strong parliamentary sovereignty, a first-past-the- post election system, a strong Cabinet, and executive dominance of the legislature – is prevalent.”		
Menz, 2008 “...unlike elsewhere in Europe, the role of courts and, more remarkably, parliament is not as pronounced, affording the executive significant political power in shaping policy. Some observers have commented on the increasing presidential element in British		

Explaining the *public opinion-law gap*
– a review of the research literature

Table E The UK Parliament in immigration law-making: a review of the research literature

Importance	Bent
<p>politics since Thatcher (Foley 1993; Thomas 2000), further contributing to this concentration of unchecked political power.” (p. 153)</p> <p>Schain (2008: 37, 124)</p> <ul style="list-style-type: none"> ▪ “As in Britain, essentially all control over the legislative agenda has been placed in the hands of the executive (president and prime minister).” ▪ “The governmental structure is defined by the strong control that any British government has over its legislative agenda. Unlike the United States or France, there are no clear constitutional constraints on government action.” <p>Jennings (2009: 849, 866)</p> <ul style="list-style-type: none"> ▪ “The executive (Cabinet) controls the legislative process in Parliament, restricting the influence of public opinion...” ▪ “In Britain, the executive sets the legislative timetable in Parliament and exercises direct control over bureaucratic departments and agencies. This constitutional design restricts the influence of public opinion over the elected legislature, but enhances the degree of political control over government outputs...” <p>Cerna and Wietholtz (2011: 203-204)</p> <p>“In general, the executive power remains strong in the UK. The government can implement policy changes (e.g. increased financial allocations for immigration control), and does not need to go through Parliament. The legislature was able to achieve only small changes to British migration legislation. In other cases, the executive was able to push through its proposals.”</p> <p>Consterdine (2015: 1449)</p> <p>“This suggests that Freeman’s predictions have greater applicability in a political system perceived to be more open to the interests of big business than in a parliamentary system, such as Britain, where constituency MPs are more receptive to the (usually) anti-immigration preferences of their voters (Balch 2010, 21), and where the executive leads on policy in a fairly autonomous manner.”</p> <p>Hampshire and Bale (2015: 5)</p> <p>“...unlike most states, UK governments are – in normal times – constitutionally and politically empowered (by a tradition of strong executives facing relatively few legislative or judicial constraints) to act decisively if they so choose.”</p>	<p><i>No more statements</i></p>

4 Theoretical framework

In this chapter, I delineate the theory of political motivation that I have developed to guide my interpretation of the behaviour of the actors at the centre of the UK legislature. These include Government ministers; Government and Opposition MPs; civil servants; Peers; lobbyists; lawyers; and academics. I also outline a particular view of the political landscape for the UK Parliament: the British state with its distinctive ‘Westminster system’.

A theory of political motivation: ‘interpretive political opportunity structures’

The organising perspective of this study, ‘interpretive political opportunity structures’, combines two well-developed existing approaches, though I adapt each for my own purposes. The first approach is ‘political opportunity structures’ (POS), as outlined by Koopmans and Statham in their theoretical study of migration and ethnic relations politics (2000). The second is the version of interpretivism developed by Bevir and Rhodes over several articles and book chapters (Bevir and O’Brien, 2001; Bevir and Rhodes, 1999, 2001, 2006a, 2006b, 2007, 2008; Rhodes, 2000; Bevir *et al.*, 2003), and which received full elaboration in their books *Interpreting British Governance* (2003) and *Governance Stories* (2006).

These are, first, political opportunity structures (POS), as outlined by Koopmans and Statham (2000); and, second, the version of interpretivism developed by Bevir and Rhodes over several articles and book chapters, and which received full elaboration in their books *Interpreting British Governance* (2003) and *Governance Stories* (2006). These theoretical frameworks are themselves integrative, each combining concepts and research methods from a plurality of approaches and disciplines.

The political opportunity structures approach emphasises the *constraints* faced by political actors in their attempts to maximise their interests and achieve their goals. Accordingly, it pays special attention to the institutional contexts in which actors are embedded, and which place limits upon their behaviour. The interpretive approach, by contrast, pays greater attention to individuals’ improvisational and creative capacity to act – their *agency*. In this second approach, the authors do not deny that actors’ behaviour is constrained by the institutional circumstances in which they find themselves, but the

focus is on actors' *interpretation* of these circumstances. It is their interpretation, in combination with their beliefs, values, preferences, interests, and goals, that help to explain the strategies they devise to circumvent, exploit, or manipulate those circumstances to their advantage.

In a nutshell, the combination of these approaches – what may be termed 'interpretive political opportunity structures' or 'POS-interpretivism' – proceeds through an examination of how actors' behaviour is shaped by their multi-faceted beliefs, in interaction with their interpretation of the constraints and opportunities that they anticipate will affect their potential to realise their political goals. First, however, we need to examine critically each of these approaches, beginning with the work of Koopmans and Statham on POS (2000).

Koopmans and Statham: their POS approach

The POS approach was originally applied to the analysis of social movements and other forms of collective action in circumstances of "contentious politics": what results when actors, working in concert, confront elites, authorities and opponents with their political demands, requests, or appeals, or those of whom they claim to represent (Tarrow, 2011: 4). The typical players in episodes of contentious politics are ordinary people who, often in alliance with more influential citizens, attempt to exert power against national states and bring about some form of social change. Key to explaining these dynamics are political opportunity structures, defined by perhaps its most influential exponent, Sidney Tarrow (1994: 85), as:

...consistent – but not necessarily formal or permanent – dimensions of the political environment that provide incentives for people to undertake collective action by affecting their expectations for success or failure.

The analytic context of *contentious politics* and the political activities of *social movements* naturally invokes two broad camps: political elites who hold power, most typically the reins of national government; and political 'challengers', who wish to change policy in ways that could not be expected without their action, and whose success depends upon teamwork and taking advantage of political opportunities.

Although POS was originally applied to *contentious* collective action, expressed through, for example, social movements, protests, rebellions, riots, strikes, and

revolutions, the idea of political opportunity structures alone holds promise for an analysis of the UK's Parliamentary process. The proposition is that POS can be applied to this form of *non-contentious* collective action, in which non-Government actors with relatively little power struggle against the will of a more powerful executive. Like the participants of social movements, these non-Government actors must also rely for their success upon collaboration and opportunity. (For a history of collective action, including its non-contentious variant, see Hardin, 1982, 1995).

POS is based on an idea of collective action derived from the sociological theory of *resource mobilisation*, which was influenced by economics, and which was first elaborated by McCarthy and Zald (1977). From this perspective, collective action comprises the behaviour of two or more persons that is based on a rational appraisal of the perceived costs and benefits of different strategies, the success of which depends critically upon the acquisition and use of resources. Without such resources, political mobilisation is impossible (e.g., Zald and Ash, 1966; Oberschall, 1973; McCarthy and Zald, 1977).

In the POS framework of Koopmans and Statham, this notion of collective action is re-purposed, such that it may be used to describe the strategies of *any* group of political actors, and not just social movements, in drawing resources from the political environment in which they operate (Eisinger, 1973). What in this context are these resources?

Resource mobilisation

The article that introduced resource mobilisation to the study of social movements identifies the types of resources at issue, including money, labour, facilities, and time (McCarthy and Zald, 1977). However, its authors present no sustained treatment of what is the *nature* of the resources that are mobilised.

However, this list is based on an impressionistic survey and its authors present no sustained treatment of what is the *nature* of the resources that are mobilised. The first systematic account was in fact provided by Edwards and McCarthy (2004), who advanced a five-fold typology that classified resources as “moral, cultural, social-organizational, human, and material” (117). The possession, pursuit and utilisation of some of these resources proved indispensable to understanding the behaviour of actors in the present study. Therefore, it is important first to introduce the detail within Edwards and McCarthy's classification (2004).

Moral resources include legitimacy, solidary support, sympathetic support, and celebrity; *cultural resources* consist of conceptual tools and specialised knowledge that have become widely, though not necessarily universally, known; *social organisational* resources are of three broad kinds: infrastructures, social networks, and organizations; *human* resources include labour, experience, skills, and expertise; and *material* resources includes money, property, office space, equipment, and supplies.

The relevance of this delineation of resources will become clear later in the thesis. However, it is worth pointing out that certain categories were to prove especially applicable to the Westminster scenario. First, ‘intellectual resources’, defined loosely as knowledge, applied experience, and expertise, and a sub-category of human resources, endows actors with a competitive advantage in their field of activity. For example, the Government has substantial reserves of intellectual resources in the form of expert and experienced lawyers, who draft its legislation, and help ministers to defend its legality. Second, moral resources recur in the form of pledged advocacy or support, such as when a Parliamentarian puts their name to a fellow Parliamentarians’ amendment, or votes in support of it. Finally, to these five sets of resources I have added one more. “Political capital” as a concept was devised to reflect the observations offered by my interview respondents when referring to the capacity of an actor to influence the behaviour of other actors. They also indicated how an individual might have a reserve of such influence, such as that built up through the accumulation of favours owed to him or her.

This resource-based approach, which has been shown to be both fruitful and credible when applied to actors in contexts beyond social movements (e.g., Giugni *et al.*, 1999), should resonate strongly with analysts of the UK Parliament. As the Parliamentarians I interviewed made clear, to influence legislation they must collaborate with lobbyists, who advise and draft amendments for them; with other Parliamentarians; and with the Government. It is partly in the process of this collaboration that resources are accumulated and consolidated. Protagonists hope, therefore, that these resources, which are usually of a moral, human and social organisational kind, will help them successfully influence immigration law.

Which dimensions of POS?

Now that we have reviewed the general intellectual foundation of POS, with its focus on collective action’s mobilisation of various social resources – we can define more precisely the perspective of political opportunity structures as developed by Koopmans and

Statham in their analysis of immigration politics. The authors identify two main approaches to POS, one being better suited to *diachronic* analysis and the other to *cross-sectional* research (2000: 33-34). My framework combines elements from each, and is deployed to analyse three aspects of the political environment within which Parliament's legislators acted to influence the Bill, as follows:

- (1) the formal institutional structures that constrain and enable political actors;
- (2) the informal procedures and prevailing strategies of these actors; and
- (3) 'political alliance structures'.

First, formal institutional structures are the constitutional, legal, and rule-bound relations between actors within a polity, which define their relative powers, responsibilities, and competencies. Koopmans and Statham advise that, "Specific dimensions of this opportunity variable may include the degree of centralization of political institutions, the type of electoral system, and the separation of powers between the executive, legislative, and judiciary" (2000: 34). Generally speaking, these institutional features define the boundaries within which political actors must operate. By way of illustration, in the UK Parliament the scrutiny of the executive's legislative proposals takes place within its debating chambers and in accordance with their respective codes and conventions. This means, for example, that a Parliamentarian cannot deliver a speech out of turn, or use abusive language, or at least cannot do so without facing sanction.

Second, the more informal dimensions of political opportunities encapsulate the unwritten rules, conventions and procedures that have emerged historically within a polity for the management of political activity, whether that be struggle, contestation, or debate, for instance. Foremost among these informal norms are those associated with polarising political traditions, through which conflicts have traditionally been approached by elite political actors, and that continue to shape the behaviour of, and reactions to, political challengers. In the UK, this is exemplified by conduct between the Conservatives and Labour (Koopmans and Statham, 2000: 34; see also: Bale, 2014). In this present study it applies to, among others, Parliamentarians and lobbyists, both of whom can be regarded as potential challengers to the political elites.

These first two dimensions owe a special debt to the neo-institutionalist approach in political science exemplified by March and Olsen (1983), which they derived from the simple idea that the behaviour of political actors – individuals, groups, or institutions – is influenced in no small way by their institutional environment (see also, Hall and Taylor, 1996). Thinking of the present study, because it is the behaviour of political actors that

ultimately determines the shape of immigration law, it follows, if we are to take seriously the institutionalist perspective that such law will also be influenced by the institutions within which these actors are embedded²⁴. Moreover, almost all recent major empirical studies of UK immigration law-making adopt an institutionalist perspective, thereby endorsing Koopmans and Statham's implicit view of the analytic value of this approach (e.g., Freeman, 1992, 1995a; Cornelius *et al.*, 1994; Ireland, 1994; Joppke, 1996; Guiraudon, 1998a). This theoretical core has been supplemented by historical ideas and methods (Brubaker, 1992; Hansen, 2002) as well as those from sociology (Guiraudon, 2002, 2003). What is significant here is that all these studies have generated *congruent* findings about the main actors and processes involved in the UK's immigration policy-making.

²⁴ At a basic level, law-making, whether immigration or otherwise, occurs both *within* and *through* political institutions.

Consider the political institution at the heart of this study, Parliament. Immigration law-making certainly occurs *within* Parliament. It takes place within its debating chambers, which shape the thought and behaviour of its constituent actors, MPs and Peers. There are limits on what an actor can do within Parliament, where behaviour is constrained by Parliament's associated codes and conventions. Other actions, if not circumscribed, may be either incentivised or disincentivised. Importantly, these codes and conventions function to not only constrain certain individuals, but also to empower them. For example, in the UK Parliament, loudness of voice is not a factor in determining who can speak. The system of rules that governs who may talk and at what time means even those who are soft of voice can be heard.

Law is also made *through* Parliament because, without the majority support of both Houses, a bill cannot become law. Also, if enough Parliamentarians vote to amend a bill, that bill is amended, which can change the law that is ultimately enacted.

Finally, institutions are important for a third reason. They influence the powers, interests, and choices of political actors via the influence of their *perceptions* of their role and power; and of what is achievable, acceptable, admirable, prudent, futile. Continuing with our example of the British Parliament, the design of that institution grants each individual legislator in attendance one vote on each piece of legislation, as well as on any proposed amendments put to a vote. That is an example of an institution influencing actors' powers. With respect to interests and choice, the design of electoral and political institutions affects the way in which individual or aggregate preferences on an issue translate into actions by elected representatives. As Hix and Noury have observed (2007: 186):

in a first-past-the-post electoral system and a separation of powers between the legislature and the executive (as in the United States), elected politicians are likely to respond issue by issue to the preferences of their constituents, rather than follow their personal ideological preferences or the voting instructions of their party leaders. In contrast, in parliamentary systems, with strong party organizations and where elections are fought on broad ideological issues, elected politicians are more likely to follow their general left-right preferences or the voting instructions of their party leaders.

Finally, the third part of my POS framework is that of political alliance structures. Compared with the previous two dimensions, which are associated with more enduring institutional arrangements, alliance structures are tied more closely to the specific contingencies of time and place. As Koopmans and Statham affirm, they “refer to the specific balance of power relationships between actors at a given time and place, including the composition of the party system, and the relative strengths of political parties and the government” (2000: 34). This includes political actors’ collaboration with influential allies as a means of resource mobilisation. Thus, a particularly conducive situation for mobilisation by political challengers is when political elites, which refers in the present study to the Coalition Government, are internally divided on an issue.

The POS approach outlined above has come under criticism, chiefly for over-focusing on the institutional dimensions of opportunities, and so failing to take seriously their cultural and discursive basis (Koopmans and Statham, 2000: 35). To remedy this, Koopmans and Statham outline an approach they call “political discourse dynamics”, which has elsewhere been developed into the notion of “discursive opportunities” (Koopmans and Olzak, 2004). At the core of this methodology lie three strategic aims: visibility, resonance, and legitimacy. Success for political challengers, seeking to mobilise their claims in the public sphere, will be dependent on their ability to achieve these three aims. As Koopmans and Statham state (2000: 37):

Firstly, a collective actor and her aims must be rendered publicly visible. ... Secondly, to have an impact, a mobilized challenge must provoke public reactions from other actors: the claims must resonate and carry the contention to a wider public. ... Thirdly, no matter how much visibility and resonance a challenge achieves, it will only achieve a level of success when it becomes a legitimate contention. This means that an actor needs to legitimate herself and her claims in public, by resonating positively in the reactions of a significant number of other actors, who are willing to declare at least partial support by acknowledging that something has to be done about the problem.

Including this final discursive dimension, say Koopmans and Statham, is what allows the traditional concept of political opportunities to transcend its (neo-)institutionalist origins, restoring consideration of those dynamic cultural and discursive variables that shape political decisions (2000: 35-38). In this present study, as we shall see, lobbyists and Parliamentarians deploy a variety of methods during the Parliamentary process to project their claims into the public sphere, lobbyists through the publication of ‘briefing documents’ and media interviews, Parliamentarians through debates in Parliament.

As the repeated use of the term “structures” implies, the POS approach thus described has comparatively little to say about challengers’ *agency*. Its focus is resolutely upon those more enduring, inflexible features of an actors’ political environment. Responding to this apparent blind spot, one of the most influential advocates of POS, Sidney Tarrow, has himself conceded that the term ‘structure’ is perhaps misleading, as most opportunities need to be *perceived* (2011: 12). Perception is clearly a fundamental or even *prior* variable, and certainly more of an agential category than a structural one; but the challenge for the analyst is how to determine such perceptions. Koopmans and Statham indeed acknowledge that “only perceived realities can affect collective action” (36), yet they have almost nothing to say on the matter and provide no guidance on research method or approach.

For this we must turn to interpretivism and specifically to the work of Bevir and Rhodes, who have directed this approach to their studies of British politics and governance, a subject that aligns with this present study’s research into the role of the legislature in immigration law-making.

Bevir and Rhodes: their interpretive approach

In several articles authored both separately and together, and then in two co-authored books, Bevir and Rhodes advance a fresh alternative to what they see as the ‘normal’ mode of political science, one based on “modernist empiricism” with roots in positivism (2003: 3). This alternative perspective is *interpretive*, which like all such approaches, “begins from the insight that to understand actions, practices and institutions, we need to grasp the relevant meanings, the beliefs and preferences of the people involved” (2003:1). Interpretation, they argue, is not merely preferable in the analysis of politics, but necessary. They offer two reasons. The first is straightforward: that people act on their beliefs and preferences. The second is that beliefs and preferences cannot be apprehended solely from outward facts about a person, such as their social class, biography, ethnicity, gender, and institutional position. Though these may *influence* a person’s beliefs and preferences, they do not do so in a deterministic way.

Hence, a political actor, like Theresa May, occupying a certain institutional position, here Home Secretary, is likely to be influenced in her behaviour by certain objective features of that position. However, that position alone will seldom be enough to explain the behaviour of the person who occupies it. Thus, while we might say that, as Home Secretary, May will have a clear interest in ensuring the Immigration Bill is changed as

little as possible during its passage through Parliament, we could not infer from that fact alone why she initially chose to shape the Bill in the way that she did. For that, we must examine the content of her beliefs and her justification for the decisions she made.

However, Bevir and Rhodes go further than refocusing analytic attention upon actors' beliefs and preferences. For them, "the old language for describing Westminster and Whitehall is at best a partial description of how British government works" (2003: 10). Such familiar concepts as "institution", "government", and "the Westminster model", they view as unfruitful, even misleading. In their place, Bevir and Rhodes posit a new terminology, which, they argue, makes possible a more accurate analysis of British government. This terminology includes such concepts as "decentring", "tradition", "dilemma", "governance", "policy networks", "hollowing out", the "core executive", and the "differentiated polity" (Bevir and Rhodes, 2003: 9). These are the leitmotifs of *Interpreting British Governance*.

This version of interpretivism would indeed appear to offer fresh insights into the dynamics of Westminster politics. In that respect, it promises to be a useful addition to this researcher's analytical armoury. However, whilst it may be helpful to incorporate aspects of the interpretivism of Bevir and Rhodes, applying it in its full form, would be incompatible with the version of POS employed in this present study. How could it be otherwise when they propose to dispense with the concept of the *institution*, which is integral to the first two elements of this study's theoretical framework?

As such, although I embrace the fundamentals of Bevir and Rhodes and accept their arguments about the universal importance of beliefs, meanings, and interpretation to political life, I do not adopt their approach wholesale. Whilst they provide a useful analytic lens for this study, it should not be at the expense of jettisoning what I have found to be particularly useful concepts within mainstream political science. That, I think, would entail throwing out the baby with the bath water. It remains important to converse with earlier research on British government, against which Bevir and Rhodes's terminology lacks clarity and familiarity. Moreover, for this study of Parliament the notion of 'institution' has powerful significance, and is informed by the neo-institutionalist foundation of POS.

It follows that for this present study a combination of POS and a *less fundamental form* of interpretivism than that proposed by Bevir and Rhodes would be most productive. This tempered form of their interpretivism retains its focus upon individuals' sense-making and beliefs, without rejecting more conventional concepts of political science. One such concept, the 'Westminster system' or 'model', provides the institutional context for this present study. But what is it? And why do Bevir and Rhodes wish to abandon it?

For Bevir and Rhodes, “[t]he phrase ‘Westminster model’ refers to the concepts, questions and historical story used to capture the allegedly essential features of British government” (2003: 25). What are these ‘alleged’ features? Bevir and Rhodes provide a useful definition (2003: 26), quoting Verney (1991: 637):

The characteristics of the Westminster model...include: strong cabinet government based on majority rule; the importance attached to constitutional conventions; a two-party system based on single member constituencies; the assumption that minorities can find expression in one of the major parties; the concept of Her Majesty’s loyal opposition; and the doctrine of parliamentary supremacy, which takes precedence over popular sovereignty except during elections.

Of significance to this present study is that a clear corollary of such a strong executive is likely to be a relatively weak legislature, a view that has been confirmed by researchers (e.g., Lijphart, 1999). However, Bevir and Rhodes are reluctant to accept such a definition and identify some “cracks” in the model, most notably a Whiggish historiography which tends to present the Westminster system as arising out of a single and unilinear progressive idea or spirit that underlies the evolution of British government (2003: 27-28).

Nonetheless, a principal merit of this model is that it provides a clear baseline for any discussion of British government. Perhaps more importantly, as Bevir and Rhodes concede, “It could be argued that the Westminster model is the pervasive image shared by British politicians and civil servants” (2003: 26). My research supports that view, whereby the language and culture disclosed by the study’s informants reveals the veracity of this model. Established through this study’s interpretive lens as applied to its interviewees, the model is essentially a structural set of arrangements, given shape and meaning through the perceptions of the study’s social actors. As such the model, which is a predominant frame of reference for those involved in the Westminster system, would seem to offer a sensible and realistic means for capturing the political terrain that is the setting for the legislature, which lies at the centre of this study. It is to this institution that we now turn our theoretical antennae.

The legislature within the Westminster system

To understand the role of the national legislature of any country, we must first examine the broader constitutional system of which that legislature is a part. As the term implies, a constitutional system describes the way in which a political entity, typically a nation-state, is *constituted*: its basic organisational structure and make-up, most especially the procedures by which laws are made, applied, interpreted, and by whom. The ‘Westminster model’ is one kind of constitutional system: a democratic, parliamentary form of government modelled on that which developed in the United Kingdom, and which takes its name from the Palace of Westminster, the location of the UK Parliament. Today, some variation of the Westminster model is found in at least thirty countries, including Australia, Canada, Ireland, India, Israel, Japan, Malaysia, Pakistan, Singapore, and New Zealand.

The characteristic features of the Westminster system or model are, as we have seen, a strong executive and weak legislature. But what does it mean for an executive to be strong and a legislature weak? To answer this question, it will be necessary to first describe more precisely what it is we mean by the terms executive and legislature. These are typically viewed as comprising two of the three central organising elements of the liberal democratic state, the third being the judiciary. To provide greater clarity to the analysis that will follow, we first turn to a consideration of these constitutional elements.

The three branches of the liberal democratic state

It was Montesquieu (1748) who provided the first detailed model of the governmental system of modern nation-states, dividing it into three distinct branches (based, it is said, on a misunderstanding of contemporary British politics). As already mentioned, these are the executive, the legislature, and the judiciary. For Montesquieu, each performed a different function, and had different responsibilities and different powers. Believing political power to be open to abuse and that abuse to be dire in its consequences, Montesquieu argued that it was important for each of these branches of government to be kept separate from the others. No one person or small group should exercise powers under more than one of these branches of government. That, thought Montesquieu,

would be enough to guard against the tyranny that invariably results when too much power is concentrated in too few hands.

In Montesquieu's model, each branch would have prescribed powers that would also be circumscribed. Thus, the *executive* has the power to take decisions and enforce the state's will, but not to make the law, that role being afforded to the legislature, nor to interpret and discharge the law, that role being reserved for the judiciary. However, in most modern political systems, the UK included, this neat demarcation does not hold. Members of the executive are the source of most new law, even if they do not formally pass it. Moreover, in many modern countries, especially those with parliamentary political systems, members of the executive will also be members of the legislature.

Finally, regarding the executive, there is also a debate within political science about whether it should be taken to include only the political heads of the state apparatus: in the UK, the prime minister, cabinet ministers, and junior ministers; or whether the civil service should also be included. Strictly speaking, civil servants are assumed to have a staff function in relation to the executive, providing expertise, advice and support. Yet, the level of experience and knowledge held by civil servants may *de facto* place them in a relatively powerful position in relation to their departmental ministers. In this present study, this was evident in the actual drafting of the Immigration Bill. It is for this reason that the civil service might be said, at times, to function as a part of the executive, whilst recognising that the Government is essentially its cabinet ministers, drawn from the Coalition parties.

The *legislature* in Montesquieu's scheme is the official *law-making* body within the liberal political system. It need not be an elected assembly, although usually they are. Again, it is important to recognise that the reality of most government systems today does not accord with this model nearly as well as it did in Montesquieu's time. This is for two main reasons. First, national legislatures like that of the UK Parliament are never *purely* law-making bodies, in that they always have some control over the executive. For example, the UK Parliament can remove the government through a vote of no confidence. Second, and perhaps more damaging to this conception of the legislature, is the existence of the following arrangement, described by Robertson (2002: 278):

As a vast amount of the material that serves to lay down binding and legally enforceable rules in any modern society does not originate in, and may hardly have been seen by the parliament or legislative body, but is instead created by the executive under relatively light legislative powers of overview, the distinction [of the legislature as a law-making body] is rapidly losing an empirical referent.

Finally, there is the *judiciary*, that branch of government which interprets and discharges those laws enacted in Parliament. More prosaically it comprises a country's courts and judges with responsibility for deciding upon the guilt of alleged law-breakers and where guilty their punishment. More germane, however, is that the judiciary has the power to call governments to account through its interpretation of laws, which may result in decisions that find against government actions as well as endorse them. This is especially relevant in cases brought before the courts to protect the rights of asylum seekers and refugees.

These three distinct branches of government are the bedrock of that classic doctrine of liberal politics, the *separation of powers*, although “[f]ew political systems operate, even in theory, by a strict separation of power” (Robertson, 2002: 443), the triple distinction on which the doctrine is based remains useful, and has become a part of ordinary discourse. What political analyst could deny, for instance, that a major problem of totalitarian or authoritarian political regimes, such as one-party states and military dictatorships, seems to be that the will of one person or group is exercised across all three branches of government?

Having considered the tripartite sources of power within the modern democratic nation-state, including the legislature, we can now turn to a second important matter concerning the focus of our study, the role of the legislature today in the British system of government.

The role of the UK Parliament

The role of any legislature depends upon the constitutional system of which it is a part, and whether that system is considered to be parliamentary, semi-presidential, or presidential (Fish and Kroenig, 2009: 2). Scholars agree that a parliamentary system is one in which (1) persons from the legislature, typically a parliament, form the government; (2) the government, which exercises considerable executive power, is held to account by that parliament; and (3) there is no president or similar leader(s) elected by the legislature (Fish and Kroenig, 2009: 2). The UK's Westminster system satisfies all of these criteria and is undoubtedly a parliamentary system of government. In fact,

parliamentary systems are the predominant form in the EU, numbering twenty-three out of the twenty-eight Member States.

It is said that Westminster systems, as parliamentary systems of government, have a less strict separation of powers than do presidential systems. Certainly the latter have a more marked separation of powers with respect to the executive and legislature. In the United States, the presidential system *par excellence*, Congress is a more-or-less co-equal branch of the state. That is a far cry from legislatures under the Westminster system. Here the party with the most legislators in parliament typically goes on to form the government, with the latter viewed as *answerable* to the legislature, whereby its proposals are presented to legislators for scrutiny and amendment. At first glance, this formal arrangement might appear to allot significant influence to the legislature, but perhaps not. In the UK's Westminster system, Parliament is inextricably linked to executive power, because a Parliamentary majority gives the government the power to enact its desired legislation, assuming it can persuade its backbenchers to support it issue by issue. Hence, the legislature formally passes new laws and, as a partly representative body, gives democratic legitimacy to them. It does not mean it has the power to match the executive.

Even so, in the Westminster system as much as in the presidential system, a main constitutional function of the legislature holds constant: to redistribute power, and prevent its overconcentration in the executive. Thus, in the UK, Parliament forms a key part of the political system's constitutional 'checks and balances'. This aligns with another essential responsibility of the British Parliament, which is to scrutinise the detail of the proposed laws placed before it by the executive. Indeed, the UK Parliament's responsibility to provide oversight of the executive is perhaps the property of greatest interest in this thesis. This oversight is provided by two chambers, each with a separate basis for the selection of its members, and with different functions and powers. It is this feature of the Westminster system that we now address.

A bicameral legislature

The UK Parliament is bicameral, meaning that it comprises two houses, the House of Commons, or lower house, and the House of Lords, which is the upper house. In 2016 this parliament was one of seventy-eight legislatures worldwide that have or has more

than one chamber, around forty per cent of the total (IPU PARLINE Database: Structure of Parliaments, 2017).

The political justification for second chambers has been described, following a metaphor adapted from biology, as “redundancy” (Patterson and Mughan, 1999). The idea is that, in the same way that animals can live with one eye, one kidney, or one lung, it is nevertheless better to have two, in case one malfunctions. When applied to legislatures, the implication is that under bicameralism each chamber may correct the mistakes and check the excesses of the other. In explaining this, Anthony King is most eloquent:

In modern Britain...the existence of the House of Lords—or of some successor body to the House of Lords—is almost invariably made out on grounds of redundancy, of the desirability of having a chamber of second thoughts, a chamber able to act as a check on the excesses of the House of Commons, meaning, in practice, the excesses of the government of the day.

There is another consideration, also from King, concerning “the desirability of having an august body...where issues of the day can be debated at a high level and relatively free of the party-political constraints that often inhibit members of the lower house” (2009: 306). Observations of both the Commons and the Lords, along with a close reading of Hansard, as part of this present study, does indeed demonstrate the validity of this assertion. However, conventional notions of the Lords give the impression of it being a forum that has little impact. What powers does the Lords actually possess? Certainly, it is far from being of equal power with the Commons (e.g., Wright, 2003). Nevertheless, it enjoys formal powers that are substantially greater than a great many other second chambers (Fish and Kroenig, 2009). It can block indefinitely the few bills that start in the Lords, as well as secondary legislation; and it can delay for around a year the majority of other bills, which start in the Commons. In its scrutiny of the Immigration Bill, would the Lords exploit these potential powers to compel the Government to offer concessions?

An integrated approach

The theory of political motivation that I have outlined integrates political opportunity structures with an interpretive approach.

The POS approach, when applied in this study, has regard for four main dimensions of political life: (1) the formal institutional structures of government and Parliament; (2) the informal procedures and prevailing strategies of these institutions' constituent actors, especially Parliamentarians and lobbyists; (3) political alliance structures, which includes political actors' collaboration with influential allies as a means of resource mobilisation; and (4) the visibility, resonance and legitimacy of public political discourse. These dimensions tend to emphasise the constraints faced by political actors, which limit their agency.

I have supplemented POS with an interpretive approach, one that can be seen as a selective version of that advocated by Bevir and Rhodes. Following fundamental interpretive principles, attention is directed to the meaning of political actors' utterances and behaviour, via a consideration of their beliefs, preferences, values, interests and goals, as they are understood by the actors themselves – whilst, counter to the ideas of Bevir and Rhodes, leaving intact the familiar and useful concepts of the 'institution' and the 'Westminster model'. This approach emphasises the creative freedom of actors, and their capacity to make sense of their environment and thereafter act to serve whatever they perceive to be their interests and objectives.

This integrated theoretical framework requires the application of certain research methods; and these are the subject of the next chapter.

5 Methodology

The theoretical framework of the previous chapter provides clear guidelines about the kinds of question that ought to be asked in political science research. Why did a political actor, *A*, behave in that way? What were the constraining circumstances of their action? What is the power of *Actor A*? Why did *A* make that argument? Why was that argument successful in recruiting the support of *Lobbyist B*? Why, in the first place, did *A* recruit the assistance of *B*? And what explains *B*'s backstage relationship with *Peer C*? And why did *C* co-operate backstage with *Government minister D*? "Why did *D* make that concession?" "Why was that concession acceptable to *E*?" And so forth. These are the kinds of question to be answered in a POS-interpretive analysis. How can this be done?

An initial step consists in analysis of the *social context* in which actors find themselves. This context has multiple 'levels'. Causes may be located at any of these. At the most general level, such context invokes the broader national, European, and global situation. At a higher level of granularity, it refers, to take the example of an actor who is an MP, to their institutional environment – of Parliament, the MP's party, their constituency, and so forth.

In this analysis, I have zoomed in on one particular aspect of political actors' institutional environment: Parliament. I analysed its institutional structure, and the various stages of the Immigration Bill's passage through it. This provides necessary context for my analysis of all the Parliamentary debates on the Immigration Bill, in which the Government outlined and defended its policy against the scrutiny of the Official Opposition (the Labour Party), and was compelled to amend certain of its aspects.

This was supplemented with documentary analysis, including 'policy analysis', in which I examined Government documents that described and justified the policies of the Immigration Bill.

That might seem like enough to investigate. However, many of the kinds of question which I have sought to answer in this investigation could not be tackled with *just* those lines of enquiry. Principally, this is because the aim of such questions is *explanation*.

In the social sciences, explanation is concerned not only with answering 'who?' and 'how?', but also 'why?'. Answering the 'who?' and 'how?' questions are often indispensable to answering 'why?' questions, but on their own admit of mainly *descriptive* answers. The 'why?' question, by contrast, looks immediately for explanation

in human motivation, including by reference to values, beliefs, preferences, interests, and goals. I am also interested in actors' interpretations of their situations and those of others because they help us to understand why such actors behaved as they did.

The best instrument for ascertaining these impetuses is the in-depth qualitative interview. Values, beliefs, preferences, and goals, which provide the basis for motivation, are typically complicated, nuanced, even contradictory, and require comparably deep and nuanced qualitative examination. Even power, which might seem to constitute one of the more 'solid' or 'material' features of human relations is substantially *ideal*, constructed mentally by the actors within a field. What I have aimed for in my fieldwork, following Bevir and Rhodes, may therefore be summarised as follows: subjective understandings of the 'hows?', and especially the 'whys?', of actors' interpretation, role-playing, reasoning, and action.

I learned during my fieldwork that the political analyst of Westminster would be wise to exercise caution in the interpretation of textbook and official writings on the formal procedures and constitutional functions of the Houses of Parliament, as well as the constitutionally-defined roles of its actors. The descriptions in such accounts are often unfaithful to the complexities and nuances of the political realities. They sometimes present idealised forms of what *should* transpire, rather than empirical descriptions of what, in fact, does. I therefore spent quite a lot of time learning about the rules and conventions that govern the behaviour of Parliamentary actors *from Parliamentarians themselves*, who must, as a matter of professional survival and success, operate effectively in that environment in their everyday lives. This invokes the second dimension of the POS part of my theoretical framework.

In this research, I have therefore integrated four main lines of investigation:

- documentary analysis, including policy analysis;
- analysis of the formal institutional contexts of Parliament in which actors developed, defended, scrutinised, criticised, and amended the Immigration Bill (our first POS dimension);
- the more informal rules and unwritten procedures that guide actors (our second POS dimension);
- discursive analysis of actors' public statements (the fourth aspect of my framework, also derives from the POS of Koopmans and Statham); and
- qualitative in-depth interviews with key (often elite) actors (as a means of elucidating the first three and fifth interpretivist dimension of my framework).

In Chapter 12 of this thesis I provide a quantitative and qualitative analysis of Parliament's legislative impact upon the Immigration Bill. I follow the state-of-the-art method used in Russell (2010), Russell and Cowley (2016), Russell *et al.* (2016), Russell *et al.* (2017). Because that analysis is limited to that chapter, I outline the methodology there.

In the rest of this chapter, I describe my research practices in some detail. This is because I tried to conduct my research with a high attention to detail, and have reason to believe that without this attention to detail, some of my participants would not have returned my initial letter requesting an interview²⁵. Much of the more tedious detail is provided in the footnotes, to avoid wearying the reader. I therefore hope to provide to other researchers keen to recruit elite political participants, including MPs and Peers, some guidance on how to do so.

Approaching the strange world of Westminster politics

I have conducted my research as an outsider looking in upon a strange world. It is apt that the seat of British politics is known as the “Westminster village” (or “Westminster Bubble”). Like a village, its peculiar customs are liable to appear unusual, even baffling, to non-natives.

When preparing for my fieldwork with Westminster's resident MPs and Peers, I found the small but specialised literature on interviewing elites, including British politicians, to be particularly helpful in bridging the ‘cultural divide’. At a general level, as a researcher with some interview experience, though not of elites, I found the practical advice in these articles and books to be pitched at a level that allowed me to build upon my existing expertise in conducting research interviews. More specifically, advice on interviewing British political elites proved invaluable (Richards, 1996; Puwar, 1997).

²⁵ Elites, and especially political elites, seem to have an eye for detail, especially *written detail*. This should not, perhaps, be surprising. A large part of the job of such elites consists in either comprehending written material, or writing. As such, if a researcher pays close attention to the presentation and drafting of a request for participation – that can be the difference between recruiting a valuable informant, or receiving a message of rejection. For this research, it would be the difference between research with a strong empirical base, and no research at all. This was confirmed to me by the remark of one participant, a Parliamentarian, who noted that they receive many requests on their time from students, and that they turn most of them down. An exception was made in my case because I was clearly a “serious” student.

I began my PhD on 1 October 2012. The bulk of my interviews were conducted from October 2014 to January 2015, at the beginning of the third year of my degree, which for some doctoral students is their final year. It may therefore be said that the interviews were carried out rather late in the research process. Most PhD students prefer to conduct their research at the beginning of their second, not third, year.

I did not initially plan to conduct my fieldwork so late. Instead, it arose out of my desire to acquaint myself with the Parliamentary debates at all stages of the Bill, the last of which was in May 2014. Because these debates ran to over 1,500 pages of transcribed text, constituting over 800,000 words, all of which required careful analysis, it was not until August that I had finished my first reading of them. Yet conducting my interviews so late in the research process may actually have yielded some benefits – due to the interviewees' elite status. As Richards noted in an influential article on interviewing elites:

In the vast majority of cases, elite interviewing is probably most productive in the latter stages of your work. This is particularly important, as there is a tendency for elites not to 'suffer fools gladly'. Their time is often limited, and if you fail to have a very good command of your material, then this can have a wholly detrimental effect on the interview. (Richards, 1996: 201)

But a researcher cannot put off fieldwork forever. The interviews must take place, and interviewing elites brings a unique set of challenges. These challenges have been argued to result from an inversion of the usual power dynamic of social science research interviews. In a typical interview, the interviewer will be of higher status or more powerful than the interviewee. Much has been written about how to deal with power inequalities in interviews, which may result, for example, from gender, race, and class differences between the researcher and participant. The aim of such guidance is usually to improve the interviewers' sensibility to interviewees' likely sensitivities. By contrast, in elite interviews, the interviewee looks not 'down' to the participant, but 'up' to the charismatic, the talented, the creative, the intelligent, the experienced, the wealthy, the powerful, the famous, the revered, the successful. Resulting from this power dynamic are a number of risks.

Chief among these is elites “seizing control” and dominating the interview (Delaney, 2007: 215). Fortunately, this is not a problem I encountered. All participants were polite or friendly, and answered questions in a straightforward and direct way, even indicating clearly when they were not speaking frankly, due, for example, to party loyalties or particular Parliamentary codes and political conventions.

Second, there is the risk of the interviewer being “seduced” by their subject (Delaney, 2007: 217):

There is something seductive about interviewing those with great wealth, power, and success. ... You enter someone’s life for an hour or two, you may speak as ‘relative equals’ ... and it is easy to come out of an interview thinking either ‘that was amazing to interview someone like that’ or ‘that could be me’ – both of which reflect the process of seduction.

Elites tend to be very forceful and eloquent spokespeople and, therefore, it is very easy to be seduced and lose objectivity. I have watched inexperienced interviewers go through this process, returning starry eyed from an interview, identifying with, or defending, the elite person well beyond what would typically be seen after an interview.

I experienced this myself during my fieldwork. I found that there was much about my interviewees that I admired and wished to learn from or emulate: their confidence, charm, sense of humour, charisma, eloquence, erudition, kindness, and generosity. I can remember leaving some interviews thinking: “What an impressive person,” “she’s very clever,” “he’s so eloquent”, “she was so nice, and generous with her time”, and “she’s so charming and charismatic”.

My only hope is that these feelings did not affect the accuracy of my notetaking, and had worn off sufficiently by the time I came to analyse (dispassionately) the data.

Finally, if this were not already enough to dissuade a doctoral researcher from interviewing elites, according to one of the “pioneers” of elite interviewing methods (Harvey, 2010: 195), Lewis Dexter, the challenges of these interviews are such that junior researchers should perhaps avoid doing them altogether! This is because research students are too often “inexperienced” and “ill-prepared” and “needlessly take up the time of important persons” (Dexter, 1964: 557).

Dexter may have a point. In my first interview, with Dr Julian Huppert, then Liberal Democrat MP for Cambridge, within five minutes it had become clear that my knowledge of British politics, the UK’s parliamentary system, and immigration law, was wholly inadequate. Huppert is the son of Cambridge academics, and studied there himself for eleven years, including for a PhD in biochemistry that he received in 2005 (Huppert,

2005). Since losing his Cambridge seat in the 2015 general election he has worked as a University Lecturer at his *alma mater* in the Department of Politics and International Studies. Further, he was described by two Parliamentary colleagues I interviewed as “very intelligent”. It may therefore be unsurprising that his knowledge about not only politics, but immigration policy – on which I am expected to be an expert – far exceeded my own. He spoke quickly, and on things about which I knew nothing. Fortunately, Huppert realised this and was both considerate and patient in ‘bringing me up to speed’.

Nevertheless, the interview was a wake-up call. Many of my interviewees could be expected to be equally intelligent. Some had legal backgrounds (e.g., Baroness Hamwee), or are themselves top lawyers (e.g., Lord Pannick QC), or immigration law experts (e.g., Alison Harvey, Policy Director of the Immigration Law Practitioners’ Association). I thereafter resolved to learn ‘inside out’ (in fact, by rote memorisation) the details of both the Immigration Bill, and other relevant law. Moreover, I realised I would need to add to my knowledge of the esoteric workings of the UK’s political system, beyond a ‘crash course’ provided to me by Huppert. That I had exposed to myself the limitations in my own knowledge so early, especially after putting off my fieldwork for so long, was in one sense fortunate. It strengthened my resolve to ensure that the typical student, viewed by Dexter as generally unsuitable for elite interviewing, and which I feared I had exemplified in that first interview, *would not again be me*.

Of course, reading books about the peculiar risks inherent to interviewing elites is no substitute for actually interviewing them. But attempting to do so introduces a further set of more general challenges. These are the problems familiar to all social researchers conducting interviews, but which are often exacerbated in the case of elites.

First, the investigator must interview the ‘right’ people. This is the *sampling* problem. Second, when the investigator knows whom to interview, he must actually interview them. This is the problem of *access*, which is worsened in the case of elite participants (Bygnes, 2008). Finally, even if one has secured an interview, the participant in question may be uncooperative, or worse, misleading in their answers. The problem here, suggests Berry (Berry, 2002: 679), is that where interviewers are being misled – whether or not that is the participant’s intention – *how can the interviewer know about it?* This final concern reflects the problem of *data quality*: ensuring that one’s interviews produce information that is both valid and relevant. Each of these challenges and my way of tackling them is dealt with in turn.

Sampling

Earlier research has shown that the *population* of key actors in the UK immigration policy-making process is relatively small (Statham and Geddes, 2006; Somerville and Goodman, 2010). Excluding the general public and the media, its central actors are thought to number the tens rather than hundreds. Further, the government authorities at the very centre of its development can be counted on just a few hands. It was therefore not necessary to draw from this small population a ‘representative sample’, as in large-*n* research. It was quite possible to approach for interview a good many of the field’s most important actors. However, I did wish to hear from actors occupying a range of different institutionalised roles in the field: from ministers, MPs, Peers, lobbying groups, and so forth. From this diverse sample, I hoped to attain a broader view of the immigration policy field, in which I could discern how the roles of actors affected their impact upon the Immigration Act.

I designed the sample on the basis of two sets of sources: earlier research, which identified key immigration policy stakeholders (especially Statham and Geddes, 2006; and Somerville and Goodman, 2010), and Parliamentary debates. I thus approached the actors said to be endowed with the formal authority to make immigration policy, including ministers, in addition to those with the apparent power to influence it: MPs, Peers, and the interest groups said to be important in guiding these Parliamentarians’ scrutiny of government legislation. Additional interviews were added through the ‘snowball’ process, whereby existing interviewees suggested other persons whom they thought might be of interest.

The roles of interviewees fell into the categories below. The full list of on-the-record²⁶ interviewees is provided in the Appendix.

²⁶ I do not use the term “on the record” in the way typically used by journalists, by which information provided by an informant can be used freely and attributed by name to its source. Rather, as a researcher, I use the term “on the record” to refer to a much more rigorous level of confidentiality. Indeed, in journalism, this level of confidentiality goes by the designation “not for attribution”; and this is what I offered to all of my participants. *Continued overleaf...*

Thus, for “on the record” accounts in my thesis, I am permitted to: identify the names of participants as persons I interviewed; make use of all the information they imparted to me (except where they said otherwise); and quote that information in a way that could not reasonably be expected to narrow down or identify its source. I am not, therefore, authorised to ascribe quoted material to named participants, unless I have been given permission by the interviewee concerned. However, where I use a quotation without asking for permission, I am allowed to identify the category of the individual who conveyed the information. For example: “an MP I interviewed said the story was ‘completely false’, a view corroborated by another of

my informants”; or “as a Peer imparted to me during an interview, ‘the minister might think that, but he couldn’t possibly comment’.”

This level of confidentiality was described in the Informed Consent Form, which I gave to participants before asking them any questions. I invited them to read, fill out, and sign the form, before countersigning it myself. Unfortunately, however, on a few occasions the form was never handed over. This typically occurred where interviewees began immediately to engage me in conversation,

The term “off the record” is used in different ways by authors. Strictly speaking, “off the record” means that a source’s information cannot be used in any way, for any purpose. It cannot be used even if unattributed, or even to inform one’s work. For my own part, I use “off the record” to mean that I can use the source’s information, but cannot attribute it. I can neither name the person or even the category of actor to which a respondent belongs. Hence once a conversation is designated as being “off the record”, then I am obliged to not reveal that this person has spoken with me. I spoke with two respondents in this way, and so their names are not included in my thesis. In addition to these two, I also spoke more informally with ten other individuals, and their names are also not included.

These levels of confidentiality, as they apply throughout my research and in this thesis, are as follows. When “on the record”, I *can* identify the names of the participants that I interviewed; make use of all the information they imparted to me (except where they said otherwise); quote that information, but only in a way that would not narrow down or identify its source; and indicate the capacity in which the quoted speaker is acting (e.g., MP). However, I *cannot* ascribe quoted material to named participants, *except* where I have sought and been given permission to do so by the respondent. In relation to “off the record”, I *can* use the information, but I *cannot* quote, attribute, or mention it.

With regard to quotation and attribution within this thesis, the following five points should be noted. First, where I enclose a participant statement in quotation marks, “as here”, *and attribute that statement to a named individual*, I do so after having sought specifically, and received, that person’s express permission. Second, where I enclose a participant statement in quotation marks, and do not attribute that statement to a named individual, but instead to a category of actor, such as an “MP”, or “Peer”, I have not sought additional permission beyond that granted by the participant’s signing of my Informed Consent Form. Third, all statements enclosed in quotation marks are based on notes, which I wrote down as people spoke. As such, all quotations should not be viewed as verbatim, but only close approximations. Fourth, I omit quotation marks where I made notes of what respondents said after the fact on the basis of personal recollection. Fifth and finally, *unattributed statements of fact* are often based on my field notes or other elements of my investigation. Where they are not, I try to make this clear.

1. ministers;
2. civil servants;
3. Members of Parliament (in both Government and Opposition, including backbenchers);
4. members of the House of Lords (known as Peers);
5. interest groups;
6. immigration lawyers; and
7. academics.

Access

With the sample drawn, a second set of problems emerges: gaining access to policy elites. A recurring theme in the literature on elites is that they are widely sought after and hence very busy, a view supported by the diaries showed to me by participants.

An illustration of the barriers encountered by the researcher keen to interview MPs is provided in a scene from the four-part BBC documentary television series, *Inside the Commons*, some of which was filmed during my own research at the Houses of Parliament. In a telling clip (which looks like it has been edited), the Conservative MP for Wellingborough, Peter Bone, sits in his Parliamentary office with a young woman, presumably his assistant, as she asks him which demands upon his time he wishes to accept:

Narrator	<i>For loyal MPs, and rebels alike, the demands on their time are never-ending.</i>
MP's assistant	You're invited to 'What's the Point of the Human Rights Act?' with Diana Rose QC on the 28 th October.
Peter Bone MP	No.
MP's assistant	Would you like to celebrate 'Anglesey: The Premier County of Wales'?
Peter Bone MP	No.
MP's assistant	The British Retail Consortium annual reception?
Peter Bone MP	No.

- MP's assistant** Institute for Government?
- Peter Bone MP** No.
- MP's assistant** Energy security?
- Peter Bone MP** No.
- MP's assistant** And then we are...
- Peter Bone MP** Back to the start again! (To the camera operator/interviewer/similar): The first thing you have to learn when you become an MP: you come in here, and you arrive on the first day, and there's a full pile (raises hand about two feet above the top of the table). Eighty per cent of it, you just say no.

There are, however, a number of practical steps that the researcher can take to decrease the likelihood of non-response. First of all, with regard to *political* elites, it is important to avoid contacting them near to an election (Harvey, 2010: 198). A particularly good time to approach Parliamentarians is at the end of a Parliamentary recess, just before they are about to sit in Parliament.

The question of whether or not to write a formal paper-based letter, as opposed to an email, is apparently important. When drafting my initial requests for interview, I sent off only letters, following the advice given to me in personal correspondence by Erica Consterdine, a researcher who has recently interviewed over fifty immigration stakeholders in the UK, including senior politicians and civil servants.

The formal letter has the benefit of allowing the researcher to draw attention to institutional affiliation in a striking way. All my letters were headed clearly with the University of Cambridge logo, with underneath it the words, Department of Sociology²⁷.

Apart from an indication of their institutional affiliation, what else should a first letter of request contain? Several researchers suggest forms of flattery. In this regard, it is the advice of Richards and Delaney that I followed most closely. The 'flattery' they recommend is neither insincere nor excessive. It is a particular kind of flattery that simply

²⁷ In this, I followed the advice of Aberbach and Rockman, who noted, in a highly-cited article on elite interviewing, that, "It helps to have the imprimatur of a major and respected research house" (Aberbach and Rockman, 2002: 673).

emphasises that the recipient's "particular set of experiences and expertise are crucial to gaining a full understanding of the issue at hand" (Delaney, 2007: 212):

I followed Delaney's advice closely. Flattery tends to have negative connotations. It is often used to imply *insincerity*, especially *to further one's own interests*. In this research, however, the first negative connotation, insincerity, did not apply. Nor should it. If one's sample is well designed, the statement that the recipient's participation is important to gaining a full understanding of the issue at hand will be true. I changed this particular line in my letter to correspond with my understanding of the centrality of the recipient actor in the field of immigration policy²⁸.

By trying to communicate to the recipient the significance of their participation to my research, and to do so with a firmer basis in fact than the use of flattery in its pejorative sense would entail, I hoped to convey recognition for what I expected would be, for many participants, unsung contributions to the Bill²⁹, whilst avoiding a well-known pitfall of elite interviews: *sycophancy*, which can appear disingenuous, or manipulative, and is easily detected (see Richards, 1996: 201). Of course, the second negative connotation of flattery, that it is used to serve one's own interests, could be said to apply here. The particular form of flattery I used would have made the letters I sent more pleasant to receive, which would likely aid in endearing me to the recipient, and improving participation rate.

I initially sent out letters to fifty-four people asking for just a twenty-minute interview³⁰. If respondents had not responded after a month, I wrote to them again after three weeks³¹, this time by email, in case this would yield an improved chance of response;

²⁸ Thus, in my letter to Mark harper, I wrote that (with emphasis in original), "...being able to hear your insight on the development of the Act would really *make* my thesis." By comparison, in my letter to Julian Huppert, I said: "Given your very extensive involvement in the debate on the Bill (in its passage through the Commons you made more than eighty interventions, behind only the Immigration and Shadow Immigration Ministers), I would be most interested to hear your perspective on the direction of the Act, and the general state of immigration politics in the UK today."

²⁹ Two interviewees, with experience as MPs, confirmed the importance of receiving credit for achievements in politics, whilst noting that many of a politician's achievements will earn no credit, at least with the general public, because they took place backstage.

³⁰ I asked for so little not wanting to put off informants, and keen to show that I valued their time. In fact, only two interviews were shorter than twenty minutes, and almost all were over forty minutes. I estimate the median interview length to be one hour. The longest interviews were over two hours.

³¹ For this advice I thank my friend, Liam Conlon.

one respondent expressed a preference to be written to electronically, and others confessed to having misplaced or lost letters. One participant responded, without additional prompt, fully eight weeks after receiving their follow-up letter!

But how does one prepare for an interview with an elite, such as a charismatic politician? It is of course essential to have a thorough knowledge of the lives of all interviewees. In this regard, the advice of Richards, an experienced interviewer of UK politicians, was invaluable. He highlights “the obvious sources” of information on the social backgrounds and careers of Westminster elites: *Who’s Who*, *The Whitehall Companion*, *The Times Guide to the House of Commons*, and *The Parliamentary Companion* (Richards, 1996: 202). For this researcher, these sources were not as obvious as Richards suggested.

For almost all of the interviewees, I produced an “interview guide”, which I emailed to participants in advance of meeting them. This was a word-processed document in .pdf format summarising the participants’ public work on the Immigration Bill, and listing the questions I would ask. So, for MPs, the majority of the interview guides’ content was given to summaries of their speeches in the House of Commons. The interview guide served a threefold purpose. First, it displayed courtesy to the interviewees, many of whom preferred to have sight, before the interview, of the questions that they would be asked³².

The second purpose of the interview guide was to allow participants to prepare for the interview. Seeing the questions beforehand encourages and helps interviewees to give fuller, more considered, more accurate, and thereby more valuable answers. A common remark of participants was something to the effect of: “as soon as work begins on a new Bill, one forgets the last one!” Providing a summary of an individual’s work on the Bill thus helped the participant to ‘jog their memory’.

Third, the interview guide provided me with an opportunity to develop further my credibility as a researcher in the eyes of interviewees. I took care to draft my initial letters and follow-up emails with care. I did that to demonstrate my seriousness and competence as a researcher. The interview guides allowed for a continuation of this ‘performance’. From the narrow perspective of my research, the purpose of these efforts was, first, to persuade recipients to speak to me, and second, to make them take their participation more seriously. The guides may have contributed to these aims. In email correspondence,

³² A number of participants requested the questions I would be asking in their initial replies to my letters. One participant asked to be given the questions at least a week in advance. Another respondent said I should feel free to send the questions, but that their receipt would not affect his answers!

a Peer I interviewed reported that a colleague was “very impressed by your preparation”, adding “Looks like your work rate and ethic are substantial!”

All of these efforts to improve access to the key actors in the field could be said to have produced an *interview participation rate* of around forty-one per cent (based on the percentage of individuals *initially approached through letters* that were interviewed). Of the fifty-four individuals initially approached, I received positive responses from twenty-six. Of these, I interviewed twenty-two on the record, and spoke with one off the record (see Footnote 26).

With access to participants having been secured, the third set of problems arises. These are to do with having smooth and productive interviews that generate data that are of good quality: reliable, valid, original, insightful, and so forth. Concerns over data quality raise a number of practical questions. Should interviews be audio- or video-recorded, or does that reduce participants’ frankness? Should one ask relatively open questions, which allow interviewees greater freedom in their answers at a cost to response consistency and participant comparability; or relatively closed questions, which allow for higher response consistency and participant comparability at a cost to interviewees’ freedom to reply as they wish? Finally, how can we trust what political actors say? It is to these difficult questions that we now turn.

Data quality

The decision not to audio-record

When planning my fieldwork, I agonised over whether or not to audio-record my interviews. The major benefit of using a sound recorder is that it enables a full verbatim record to be produced. By contrast, if one records interviews through handwritten note-taking alone, data loss can be substantial. However, the potentially significant benefit of interviewing without a recorder is that interviewees may be more candid³³. This may apply

³³ One researcher, Les Back, has even suggested that the capacity to record voices accurately has meant that researchers have become “less observant and actually less involved in the social world.” (Baker and Edwards, 2012: 14)

with particular force to politicians; historically, recording devices are known to have caused much embarrassment to many.

In the end, I adopted a cautious approach to participant confidentiality, deciding not to audio- or video-record the interviews. Instead, I asked permission to take notes; all interviewees said that would be fine. Nor would I attribute quotations to specified participants without their permission, which I would seek by email after the interview, giving the quotation I wanted to use, along with the context in which it appeared in my thesis. Many interviewees nevertheless insisted that they did not mind being quoted, or recorded. I took nobody up on the latter offer. In one case, an interviewee asked if his son could video record the interview, and I approved.

Why did I decide not to audio- or video-record my interviews?

First, as mentioned earlier, political actors have, in recent years, and especially since the rise of mobile devices and networked communication, become increasingly anxious about leaks and gaffes. The sources of this anxiety have been well explained in *Political Scandal* (Thompson, 2000). Against this backdrop, in the trade-off between a greater quantity of perfectly-accurate data (through the audio-recording and verbatim transcription of interviews), and the prospect of increased data validity (i.e., participant frankness), I opted for the latter. My preference was for interviewee candour, in the hope that this would bring me if not closer to the truth, then closer to the truth as participants saw it. Judging by the decidedly ‘colourful’ language used by one interviewee, the notion that the absence of a recording device makes certain interviewees more open seems plausible.

Second, transcribing takes a lot of time. A common estimate is that one hour of speech takes six hours to transcribe. I decided to spend more time in data analysis than transcription. It also seems that note-taking yields a curious benefit: “Writing notes rapidly with occasional glances at the interviewee can also encourage more detailed responses” (Dexter, 2006, cited in Harvey, 2011: 438). Keen to eek whatever advantage I could from note-taking, whenever periods of silence arose, and I was keen for the participant to say more, I would begin writing, as a way of reducing the tension that arises in silence. In one interview, where the respondent took a little time to think before answering questions, taking a sip from a cup of tea provided by the participant served the same function.

Overall, then, I decided that the benefits of being able to produce a verbatim transcript and all that this implies – zero data loss, and perfect or near-perfect accuracy – did not outweigh the cost of potentially losing fascinating information that would not have been imparted were the interviews recorded. I did, of course, ensure that, as soon as

interviews were over, I took additional notes as soon as possible, to reduce data loss that can lead to researcher bias (Beamer, 2002: 92).

Turning now to the nature of the questions themselves, my interviews typically began, in line with guidance in the literature, with broader questions, before turning to more specific ones (see, for example, Beamer, 2002: 92). The first question often asked interviewees to explain their interest in immigration matters, or asked for biographical details not commonly available³⁴. Later questions tended to be more open-ended, in line with the advice in the literature³⁵.

³⁴ Aberbach and Rockman advise, “Starting with innocuous questions about the person’s background”, to facilitate a relaxed conversation, “since people find talking about themselves about as fascinating as any subject they know” (Aberbach and Rockman, 2002).

³⁵ Berry has described open-ended questioning as a “high-wire act”; although it is potentially the most valuable mode of elite interviewing it is also the riskiest as interviewers must “know when to probe and how to formulate follow-up questions on the fly” (Berry, 2002: 679) – a task made all the more difficult when the interviewer is taking notes. In my research, I took the risk, and asked predominantly open-ended questions. This was especially the case early in the research process, to allow, as Berry explains, “the subjects to tell the interviewer what’s relevant and what’s important rather than being restricted by the researcher’s preconceived notions about what is important (Berry, 2002: 681). The advice resonates. In my first interview, with Julian Huppert MP, I quickly abandoned, *in situ*, the questions I had prepared, when it became clear that they were misguided. Huppert had taken the interview in a direction of much greater relevance to my research.

Furthermore, more open questions have the additional benefit of allowing “respondents to organize their answers within their own frameworks”, increasing the validity of their responses (Aberbach and Rockman, 2002: 674). This openness was particularly well suited to the kind of exploratory, in-depth qualitative investigation I was conducting, though a corresponding cost (the research process is continually a fine balancing act) is that it makes coding and analysis much more difficult (Aberbach and Rockman, 2002: 674).

A related pitfall is for investigators to slip into the jargon of their discipline. Instead, one must *use the language of the participants*. As Beamer has stressed, the researcher’s concepts should never be explained to respondents overtly; “a better strategy is to develop an instrument that poses questions that bring these underlying dimensions into relief” (Beamer, 2002: 88). Of course, this has the potential to introduce another problem: the freedom for participants to be evasive, or steer the conversation in a direction that pleases them more than it does the researcher. This point highlights what Berry calls the, “paradox of elite interviewing”: that the valuable flexibility of open-ended questioning exacerbates the validity and reliability issues that are part and parcel of a more open, less structured approach (Berry, 2002: 679).

A third and significant benefit of asking clear, uncomplicated, and open questions, derives from the observation that elites prefer not to be ‘boxed in’ by closed questions. As Schoenberger argues:

Nevertheless, although interview questions were largely open-ended, allowing for long and wide-ranging answers of substantial sophistication and nuance, they were carefully chosen. In fact, I had a list of similar ‘core’ questions for each of the different categories of actor, though each individual interview was tailored to my needs³⁶.

Respondents are likely to feel less frustrated if they are able to explain exactly what they mean in their own terms rather than trying to fit themselves into the terms of reference proposed by the researcher (Schoenberger, 1991: 183, cited in Harvey: 2010: 202).

³⁶ Some questions I asked of all or almost all participants. Others I put only to specific categories of actor, such as lobbyists, or MPs. Many questions were actor-specific. In what follows, I provide the questions asked of all or almost all interviewees, as well as those specific to certain categories of actor. These questions were often modified depending on the interviewee.

Questions asked to all or almost all participants (not verbatim):

1. When did you first learn that the Government was developing an Immigration Bill?
2. What was your role in the Bill’s development? What influence did you have?
3. What was your political strategy in the policy-making process?
4. Who were the most important people in shaping the Bill?
5. What were their motivations?

Questions asked to non-Government Parliamentarians (not verbatim):

1. How did you prepare your scrutiny of the Immigration Bill?
2. Which external groups did you communicate with?
3. What were these communications like (with respect to frequency, content, and aims)?
4. Were you involved in any “behind-the-scenes” negotiations with the Government? What did these involve?
5. (If they tabled amendments): What was the background to the amendments you tabled? How were they developed? What was their purpose?

Questions asked to external actors, such as lobbyists (not verbatim):

1. How did you prepare your scrutiny of the Immigration Bill?
2. Which Parliamentarians did you communicate with?
3. What were these communications like (with respect to frequency, content, and aims)?
4. Were you involved in any “behind-the-scenes” negotiations with the Government? What did these involve?

For each interviewee, there were also questions I wanted, and intended, to ask, but did not include in the Interview Guide. If an opportunity presented itself, or it otherwise seemed appropriate, I would ask such questions, often at the end of the interview. Finally, I would end interviews by asking if there were any further areas I did not mention which the interviewee would like to comment on.

Trusting what elites say

The final problem is exemplified by the question: How can we trust what our interviewees tell us? Take politicians, for example. As a class, they are not known for their honesty or forthrightness. Moreover, politicians may be more intelligent, articulate, charismatic, and socially skilled than a great proportion of relatively inexperienced research students (the author included). It would therefore be unwise for such a researcher to imagine they could ‘see through’ politicians, some of whom will even have received special media training to improve their interview technique, and enable them to skilfully evade questions (Harvey, 2011: 438).

As such, one could argue that it is doubtful that many social researchers, perhaps all but the most competent, can have much confidence in distilling the truth from what elite participants say.

However, an attentive and critical interviewer asking simple and direct questions, such as “what motivated this policy?”, senses when they are being given a straight answer.

Moreover, there are a few considerations that help the researcher to improve the accuracy of the picture they glean from political actors. The first is to realise that *roles identify interests*, and interviewees are likely to respond in ways that *serve their interests*. In Westminster politics, interests are structured principally by party affiliation. Following from this, it is in the interest of a member of the Government to present the Government in a favourable light. Similarly, it is in the interest of a Labour member to present the Government in a less-than-favourable light. And so on. But more strongly than this, the kinds of things that politicians are able to say of their party colleagues will be circumscribed by party allegiance. *Loyalty is an important aspect of being professional in the political domain*. Thus, members of the Government are proscribed from criticising Government policy in public. Ministers, for example, are bound in this way by the Ministerial Code. More generally, the kinds of things that *politicians say of their party colleagues* is also constrained, though typically more by convention and the dictates of loyalty, than by written guidelines as with ministers. Consider a comment from an informant whose opinion I invited on one of their colleagues. The participant praised the professionalism of their associate, before adding something like, “but then what do you expect me to say!” Civil servants may not be able to criticise the ministers that they serve, in the same way that members of the same party will be reticent to criticise their colleagues or the policies of their party. One effect of this is that remarks that would appear to go against an actors’ party line may thereby attain greater credibility or weight.

It is important also to hear from a *wide variety of actors*, from all parties, including backbench politicians, for whom there are generally weaker disincentives to stray from the party line (this being carefully borne in mind when assessing the frankness of any statement). Throughout the interview process, I continually checked the accounts of interviewees against one another, seeking corroboration for a number of key events, hence providing a view of the field from multiple perspectives.

Third, it is important to check the House of Commons Register of Members' Financial Interests (formerly the Register of Members' Interests), to see if members' views are likely to be influenced by outside interests.

A realisation recurrent throughout my fieldwork was that the variable most important to determining the quality of data was, perhaps, the investigator himself, me. As such, I have found it fruitful to regard the primary research process as an experiential journey in which my knowledge and skills developed as I went on. My methods were under a continual process of adjustment, both in the short-term, say, over the course of an interview, but also over the whole research process, so that the comparatively more naïve researcher at the beginning of an interview, or at the commencement of fieldwork, had become, by their conclusion, a less naïve one. That is, I think, an instructive (and accurate) observation.

In spite of this, there has been a need to guard against complacency and be wary of jumping to quick conclusions on the belief that, "I've heard this before".

But perhaps most important of all has been to avoid 'easing up' on my preparation. By resisting such inclinations, and trying to view each interview afresh, tailoring it according to knowledge gained earlier in the research process, I have hoped at least to maintain, if not to improve, data quality.

The data

This research used the following sources of data:

- Twenty-two "on-the-record", semi-structured, in-depth interviews recorded by handwritten notes only, with little verbatim transcription. All interviews were conducted face-to-face³⁷. The list of these interviewees is given in the Appendix.

³⁷ I wanted to conduct all interviews face-to-face. When asked (by telephone or email) if I would prefer to conduct a phone interview, I politely suggested that it, "would be no bother whatsoever" to see the informant at a time and place of their convenience, thereby indicating

The handwritten notes were organised, condensed, and typed up into a word-processing document, which ran to around 14,000 words. The interviewees included Government ministers who defended the Immigration Bill in Parliament, Government and Opposition MPs, Government and Opposition Peers, immigration lawyers, lobbyists, and academics.

- Nine interviews, conversations, or email communications “off the record” with actors under the following categories: MPs, Peers, civil servants, lobbyists, migration researchers, immigration lawyers.
- A corpus of 341 newspaper articles, from 1 July 2012 to 1 July 2014, adding up to around 190,000 words. The articles were selected on the basis of a search of the *LexisNexis* archive of UK newspapers for articles containing as a “major mention” the word “immigration” or “migrant”, which includes “migration” and “immigrant”. By “major mention” is meant that the search terms are found in an article’s headline, lead paragraph, or index. The search was conducted for articles published between 1 July 2012 and 1 July 2014, and covered the following newspapers: *The Daily Telegraph*, *The Sunday Telegraph*, *Daily Mail*, *Mail on Sunday*, *Daily Mirror*, *Sunday Mirror*, *London Evening Standard*, *The Guardian*, *The Observer*, *The Sun*, *The Times*, *The Sunday Times*, *Daily Express*, and the *Sunday Express*. The search results provided the “most relevant” 1,000 articles. From these I selected the “most read”, which produced 341. The articles informed both a rough thematic analysis of immigration reportage, *not intended as representative*, as well as a more systematic basis for immigration-related news, events, and developments during the years studied.
- All Parliamentary debates on the Immigration Bill, lasting 93 hours and three minutes, and totalling around 800,000 words transcribed in around 1,500 pages.

my willingness to accommodate them – as well as conveying the importance of their participation to my research. Although I did not know it at the time, face-to-face interviews may yield more detailed responses than those conducted by telephone (Sturges and Hanrahan, 2004). Other benefits were clearer. By visiting participants at their place of work (often in Westminster, the seat of the UK government, and especially Portcullis House, or the House of Lords), I was able to see participants’ offices, workstations, computer screens, email inboxes, and diaries, and was able to ask for any relevant primary documentation. By three interviewees, I was given box files full of documents. One particularly long and fruitful interview took place in the home of a participant, and, contrary to usual practice, led to the interview being recorded (with audio and video) not, as is more common, by the researcher, but by the interviewee! (whose son was amassing material to chronicle his father’s life, perhaps with a view to writing his biography).

I reviewed the entirety of the video and audio footage of the debates to correct errors in the official Hansard transcripts.

- Parliamentary materials on the Immigration Bill, which are publicly available, with most accessible online, including:
 - Four “Consultation documents”, and the Government’s “results” or “responses” to the consultations.
 - Seven draft Immigration Bills 2013-14.
 - One Immigration Act 2014.
 - Three sets of Explanatory Notes for different versions of the Bill, and one set of Explanatory Notes for the Act (the Explanatory Notes for the Act runs to 62 pages).
 - The House of Commons Library research paper on the Bill (51 pages).
 - Six “Impact Assessments” for six separate provisions of the Immigration Bill.
 - Two Government Immigration Bill “Factsheets” (total: 7 pages)
 - Written Evidence for the House of Commons Public Bill Committee, comprising 65 submissions, adding up to around 250 pages, or 197,000 words
 - “Notices of Amendments” documents.
- An MP’s diary throughout the period they worked on the Immigration Bill.
- A full box file of Lord Avebury’s documents on the Immigration Bill.
- A full box file of a second Peer’s documents on the Immigration Bill.
- A full box file of an MP’s documents on the Immigration Bill.

Methodological limitations

My research has a number of noteworthy, though I hope not fatal, limitations. First of all, I failed to interview a number of the field’s most important actors. I failed, for example, to interview those actors revealed by participants to be the most important authorities: the Home Secretary, Theresa May, who did not reply to my letters, and the Immigration Ministers Mark Harper and James Brokenshire, from whom I received two polite letters of rejection. The 2015 General Election result, which resulted in the Conservatives winning 330 seats, four more than the 326 required for an absolute majority in the House of Commons, was problematic for my research, as some of those who declined to be interviewed perhaps did so on the basis of their appointment to

ministerial positions, a role with extra demands on time, and special rules and conventions militating against participation in research interviews. This was the case with Harper and Brokenshire, for example. These rules and conventions are formalised in the ‘Ministerial Code’, which advises that requests for academic research interviews “should normally be declined” (Cabinet Office, 2010: 19). Some participants said that the Ministerial Code was the reason for being unable to provide an interview, or gave this reason as explanation for their ministerial colleagues’ inability to be interviewed³⁸.

Second, in failing to interview the most important ministerial figures, my attempts to open up the ‘black box’ of immigration policy-making only went so far. In fact, I discovered that after opening up the black box of Westminster, there was inside a further black box within which the most decisive work and policy decisions take place, involving the Home Secretary, Immigration Minister, special advisors, civil servants, and other departmental ministers. It is within this black box – largely unreachable, even after-the-fact, for researchers, that much of most important policy-making takes place.

For this reason, third, my research gives almost no insight into the relations, and possible tensions, between ministers and their departments, including civil servants. I occasionally heard gossip about a minister having or not having the “respect” of his or her department, but little more. This is an important area for research, as a number of interviewees reported the importance of intra-departmental struggles between ministers and their departments, sometimes resulting from ministerial decisions motivated by short-term political reward, given that it is the civil servants who must deal with the practical implementation and impact of such decisions, for a long time after the minister has left. Recent immigration policy research also reveals the importance of inter-departmental relations, which my own fieldwork did little to illuminate (especially Hampshire and Bale, 2014; Consterdine, 2015b).

³⁸ The part of the Ministerial Code recommending that ministers refuse interviews for the purposes of academic research reads: “Ministers are sometimes asked to give interviews to persons engaged in academic research or in market opinion surveys or questionnaires. Ministers should bear in mind the possibility that their views may be reported in a manner incompatible with their responsibilities and duties as members of the Government and such interviews should normally be declined.” (Cabinet Office, 2010: 19)

PART TWO

~

Parliament and the Bill

6 The UK's post-war immigration law-making

Before turning to the details of this case study investigation, it will be helpful to first take a step back and view the UK's immigration law-making from a broader perspective. In this chapter, I therefore present an historical overview of the UK's major immigration law-making after the Second World War until the present, the period that has attracted most interest from immigration policy researchers. In so doing, I aim to situate the provisions of the Immigration Bill 2013-14 within their appropriate historical and political context. My focus here is not on the development of political parties' policy proposals (stances), which would require a more detailed history, but on the content of major enacted legislation, as either statutes, in the form of Acts of Parliament, or as secondary legislation, such as changes to the Immigration Rules (for fuller histories of UK immigration policy-making see Layton-Henry, 1981, 1984, 1992; Spencer, 1997; Winder, 2010).

Moreover, because this study focuses upon a Bill whose principal aim was announced as the creation of “a really hostile environment for illegal immigrants”, special attention is given in this history to legislation that concerns illegal immigration, which first appeared in 1962. But what is illegal immigration law? Resolving this preliminary question is the first aim of this chapter.

Illegal immigration law: towards a definition

On what basis can one distinguish illegal immigration law from the whole body of immigration law, of which it is a subset? What are the characteristic features of such law, and what are its practical manifestations?

Existing definitions

The investigator determined to answer these questions may struggle to find their answers in the literature. Although there have been many definitions of immigration policy, incorporating references to stances and implementation as well as to law, most of these

are provided as *working* definitions and are relatively brief and general. As such, they do not differentiate between policy and law relating to immigration as a whole and that which applies specifically to illegal immigration. Neither is illegal immigration law distinguished from other subsets of immigration law (e.g., Freeman, 1992: 1145).

Some definitions of immigration policy are more elaborate, with a number of authors providing a *disaggregated* definition of immigration policy. Here immigration policy is divided into different ‘dimensions’, most commonly between immigration *control* policy, and *immigrant* policy (Hammar, 1985: 7-10); as well as between labour, asylum, student, and family unification (e.g., Freeman, 1994; Freeman and Birrell, 2004; Somerville and Goodman, 2010; Milner and Tingley, 2011). However, very few of these authors identify illegal immigration as a distinctive domain of immigration law (Freeman, 1994; Freeman and Birrell, 2004).

In addition, one can find several definitions of illegal immigration (for a history of the concept see: Düvell, 2006: 21-29). These sometimes invoke the related question of what is an ‘illegal’ immigrant, which in UK law has proved an elusive concept (Couper, 1984). Furthermore, *typologies* of illegal immigration have been developed, with most of these set up around three criteria: legal and illegal *entry*; legal and illegal *residence*; and legal and illegal *employment* (Broeders and Engbersen, 2007: 1594).

However – and this signals the main difficulty – there have been no attempts to integrate in a systematic way the two related concepts of immigration law and illegal immigration, to produce a definition of *illegal immigration law* that will enable its reliable and intuitive identification. Rather, authors have tended to provide a simple working definition of illegal immigration policy or law, implying that its purpose is to ‘regulate’, ‘restrict’ or ‘combat’ illegal immigration.

Against a backdrop of definitions inadequate to the task of focused analysis, there is just one within the specialist immigration policy-making literature that offers a more thoughtful account of illegal immigration law. It is Freeman who advances this definition, based on government responses to the “specific tasks and problems” posed by four categories of immigration, including illegal immigration (1994: 18). Where illegal immigration is concerned, these responses are of two kinds (1994: 22):

- (1) measures to prevent persons from entering the country without permission such as physical controls at frontiers and airports – what may be called external controls – and
- (2) the supervision of persons legally in the country to ensure that they leave when their visas expire and do not engage in illegal activities such as working without permits – what may be called internal controls.

Though well-suited to his research, Freeman's definition is too broad for the purposes of this study. A majority of immigration control law could be said to encompass the first part of Freeman's definition, 'external controls': "measures to prevent persons from entering the country without permission". Yet, it seems more intuitive to describe such measures, which represent the foundation of any immigration regime, as having been designed to control immigration *in general*, rather than for the *express purpose* of preventing or regulating illegal immigration.

This points to the challenge in developing an analytic definition of 'illegal immigration law'. Other categories of immigration law, such as those relating to 'asylum' or 'citizenship', are specialised and narrowly defined sub-sets of 'immigration law'. Asylum law, for example, is based on a long-established and solid foundation of jurisprudence, most notably the United Nations' 1951 Convention Relating to the Status of Refugees. By contrast, nowhere does 'illegal' immigration seem to be so definitively conceptualised, and this is doubtless due to it being less a *sub-set* of the parent category 'immigration law', than *the other side of the very same coin*. In other words, the great bulk of immigration law that is created to control lawful immigration – for example, the establishment of a system that requires those entering a country have a passport – *simultaneously* produces irregular immigrants (i.e., those who enter a country without a passport) and hence illegal immigration. This might help to explain why so little work appears to have been done to clarify 'illegal immigration law' as its own identifiable *class*, and hence why the term lacks clarity.

The task ahead, therefore, is to develop a precise definition of illegal immigration law that will enable the analyst to differentiate it reliably from other specialised areas of law, but more importantly, from those laws that have no remit for *illegal* immigration. In so doing, it should also establish the specific features of law that are designed for the control of illegal immigration. Ideally, such a definition will prove to be an effective instrument in dedicated future research, both operationally and analytically.

Illegal immigration law: a definition

My definition of illegal immigration law derives from the conventional understanding of what identifies an irregular immigrant. Immigrants can be classified as 'irregular' if they: enter a country without authorisation; violate the conditions of their stay by, for example, staying in a country for longer than the period permitted by their visa; or work full-time

whilst on a student visa that prohibits such work (Boswell, 2003: 134; LeMay, 2015, 3-4). In the UK, persons who violate the terms of their conditions of stay are considered by the government to be irregular immigrants. Based, therefore, on our understanding of how immigrants are categorised as ‘irregular’, we can propose that ‘illegal immigration’ refers to the processes by which people become irregular immigrants.

From this preliminary discussion, it seems reasonable to suggest that illegal immigration law will be drafted in order to control and respond to irregular immigration, this being the start point, and endpoint, of most existing definitions. The key consideration here is that governments and the public tend to view illegal immigration as altogether undesirable. Hence, immigration law will aim, in principle, to ensure that: no persons residing in a country lack the state’s permission to be there, or are present in that country, having violated the conditions of their entry or stay (e.g., those conditions specified in a visa or comparable travel document).

Defining immigration law with respect to this aim could be argued to be somewhat abstract, because most countries do not have zero illegal immigration as their goal. It is widely recognised that this would imply excessive or impracticable levels of enforcement (Djajić, 2001: 144). Indeed, some countries appear to desire some illegal immigration, even if they do not reveal that publicly. For example, France’s Minister of State for Social Affairs, Jean-Marie Jeanneney, stated in 1966 that, “Illegal immigration has its uses, for if we rigidly adhere to the regulations and international agreements we would perhaps be short of labour” (Hargreaves, 1995: 178-179, cited in Schain, 2008: 101).

The overarching aim of illegal immigration law, introduced above served by two narrower objectives: *prevention* and *reduction*. *Prevention* itself has two distinct goals. The first is to keep unauthorised entry from happening in the first place. Legislative measures in service of this goal include fines for drivers of vehicles carrying stowaways, and making unauthorised entry a criminal offence punishable by imprisonment.

The second preventative aim is to make sure that persons do not violate the conditions on which their entry, stay, visa, or citizenship status is granted. To this end, countries must ensure that those who are permitted to stay for only a limited time, leave before that period expires. It is said that ‘visa overstaying’ is the way that most people become irregular immigrants in the UK, although in some countries the pattern is reversed, such as in the US (LeMay, 2015: 4). Understandably, then, this is a major focus of immigration law, and has given rise to initiatives such as ‘visa bonds’, to be submitted before entry and collected on exit; and ‘reminder services’, which notify visitors by email or text when the expiration of their visa is imminent.

Additional measures aimed at preventing *both* illegal entry and an individual's transition to irregular immigrant status, operate via *specific deterrence*. This is a term adopted from criminology and adapted for this study. It is used here to refer to law intended expressly to deter persons from entering or staying in the UK without state permission. Unlike laws that are intended to act as a general deterrent, illegal immigration laws designed to operate via specific deterrence are likely to be drawn up to tackle particular forms or causes of illegal immigration, or types of irregular immigrant³⁹.

The second aim of illegal immigration law is the *reduction* of the number of irregular immigrants that are *already present* in a country. Measures that serve this aim can also be classified into two kinds. The first is the *regularisation* of persons without immigration permission. This usually takes the form of amnesties, government initiatives by which large segments or all of a country's undocumented immigrants can have their status regularised.

The other reduction measure aims at securing the *exit* of irregular immigrants from a country, either voluntarily or via deportation. Like the measures aimed at prevention, those aimed at instigating the exit of irregular immigrants apply to two kinds of irregular immigrant: those who enter a country without authorisation and those who enter a country lawfully, but who violate the terms of their entry or stay by, for example, overstaying, irregular working, or obtaining their visa via deception. Such measures include the monitoring, identification and ultimately the removal of irregular immigrants. Further measures seek to constrain and complicate the everyday and working lives of irregular immigrants through policies of 'exclusion' (Broeders and Engbersen, 2007), restricting their access to accommodation or work by imposition of penalties against those found harbouring or employing irregular immigrants. All such measures are intended to compel irregular immigrants to leave of their own accord – in the case of employer sanctions, by cutting off irregular immigrants' principal means of survival. At the same time, they will also overlap with the preventative aim, by acting as a disincentive to illegal overstaying and, in the case of measures to restrict illegal working, by removing the primary motivation for irregular immigration.

Theresa May's principal rationale for the Immigration Bill, to "create a really hostile environment for illegal immigrants", is consistent with both the preventative and

³⁹ In criminology, deterrence assumes two principal forms. *General deterrence* is aimed at reducing criminal activity by targeting the *total population* with the universal threat of punishment. *Specific deterrence* is targeted at a known individual or category of offender, to deter them from criminal activity. (McLaughlin and Muncie, 2001: 88)

reduction aims, as are most of the Bill's measures, including the provisions to restrict irregular immigrants' access to private rented accommodation and to bank accounts. Such laws can be seen to straddle both of these functions assigned to illegal immigration laws, and for this study's analysis we can therefore define illegal immigration laws as those whose specific stated intention, or clearly inferable intention, or likely effect, is either:

- 1 To *prevent* or *deter* unauthorised *entry* to the UK; or the *violation of conditions of stay or entry*, such as visa overstaying, unauthorised working, deceiving the authorities in the obtaining of a visa, or exploitation of immigration law to obtain an illegitimate immigration advantage; or
- 2 To *reduce* the number of irregular immigrants in the UK, via *regularisation*, or the *exit* of irregular immigrants from the country, either voluntarily or by deportation.

Note that this definition relies only in part upon policy-makers' statements of justification for particular provisions. This is because policy-makers do not always provide such justifications or because their statements may be misleading. For these reasons, the definition allows for inferences to be made, based upon an informed judgement as to whether a provision is likely to have been introduced with the intention of controlling illegal immigration or could be thought likely to *de facto* serve that end.

Our understanding of illegal immigration law is summarised in Figure 4, which structures the main mechanisms and measures under the twin main aims of *prevention* and *reduction*. It is important to point out, however, that whilst these legal devices and instruments are organised into separate boxes that may appear under different headings, they may also share a purpose, capable of delivering on both prevention and reduction.

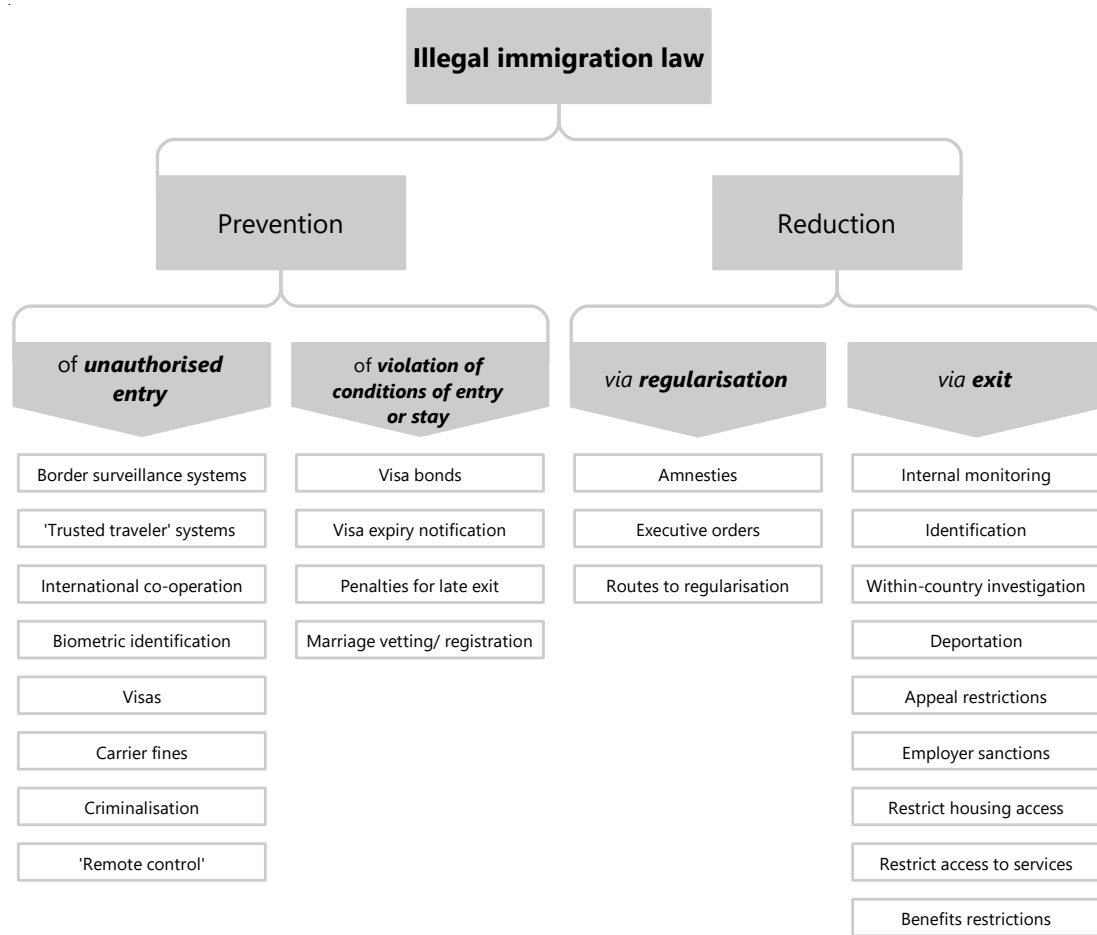


Figure 4 A schematic of illegal immigration law with examples of its measures

Now that I have clarified the concept of immigration law that underpins my analysis of UK immigration law-making in the post-war period, we may turn to the substance of the account, a modern history of immigration law-making in the United Kingdom.

A post-war history of UK immigration law-making, 1945 to 2013

I divide my historical account into four key periods. Each has special relevance for the history of British immigration law-making, and can be distinguished by a distinctive theme, or themes, which underlie its major legislative developments. These four periods are: post-war liberalisation, from 1945 to 1948; the advent of illegal immigration law-making and the “bifurcated” approach (Somerville: 2007), from 1962 to 1976; the Conservative government’s restriction of asylum and illegal immigration, from 1979 to

1997; and the ‘Golden Age’ of illegal immigration law-making, under Labour, from 1997 to 2007.

The final period of this history ends in 2007, even though 2009 saw the enactment of a dedicated immigration statute. This is because the period from 1997 to 2007, comprising Labour’s first ten years of rule, saw the enactment of five dedicated immigration Acts of major legislative importance, each of which introduced an array of measures that transformed the country’s means for combating *illegal immigration*. This was the last of such legislation before the Immigration Act 2014, as the Borders, Citizenship and Immigration Act 2009 contained no such provisions. A timeline depicting these four periods is provided by Figure 5.

Over these five periods, we will see how successive UK governments have enacted legislation in five areas of immigration law, covering both immigration *admission* or *control* law; and immigrant *integration* law. These five areas are: labour, asylum, citizenship, race relations, and illegal immigration.

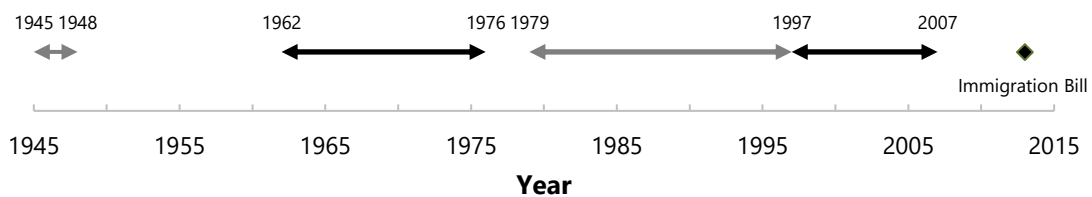


Figure 5 The post-war history of UK immigration law-making: a timeline of key periods

Post-war liberalisation, 1945–1948

In the wake of the Second World War, the UK’s workforce lay decimated. A subsequent flu epidemic worsened the already considerable labour shortages. From the ruins of war, how was Great Britain to rebuild itself? The Ministry of Labour contributed a key part of the answer: mass immigration. Thus, in 1945, it created the European Voluntary Worker Scheme (EVWS), as a means of bolstering the UK’s diminished labour force. Described as the “first low-skill economic migration programme” (Somerville, 2007: 14), the EVWS sought European (rather than Commonwealth) workers, especially those in Europe’s liberated concentration and prison camps, or those who had been displaced by conflict, or wished to escape Europe’s devastated cities (see Kay and Miles, 1992). Consequently,

in the three years following the war, as many as 180,000 people moved to Britain from the Continent to take up employment (Kay and Miles, 1992: 162-164).

The EVWS continued a pre-war trend of immigration policy through administration rather than legislation (Spencer, 1997: 8). That trend was broken, however, with the Polish Resettlement Act 1947, which offered citizenship to some 200,000 Polish troops who, having fought alongside the British against the Axis powers, found themselves at the end of the war on British soil. As a result of the 1947 Act, approximately 128,000 people of Polish origin settled permanently in Britain (Zubrzycki, 1956).

This liberal approach to immigration law-making reached its zenith for the entire post-war period with the British Nationality Act 1948. This statute represented the first – and last – major immigration Act of the twentieth century that was of decidedly *liberal* character. This was due mainly to its redefinition of British nationality via the establishment of two new categories of citizenship: *Citizen of the United Kingdom and Colonies* (CUKC), for people born or naturalised in the United Kingdom or one of its colonies; and *Citizen of the Independent Commonwealth Countries* (CICCs), known formerly as “British subject”, which included citizens of Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia, and Ceylon. Importantly, both these categories of citizen had a right to enter and reside in the United Kingdom. Thus, with the enactment of this single twenty-six-page statute, an estimated 600 million citizens of the British Empire were granted the right to settle in the UK. The Act formed the “legal foundation for the transformation of Britain into a multi-ethnic society” (Hansen, 1999: 68) and between 1948 and 1962 approximately half a million new Commonwealth (i.e., non-White) immigrants entered the United Kingdom. According to Hansen, the Act had little to do with immigration control *per se*, but rather the invigoration of an Empire in decline through affirmation of Britain's place as head of the original members of the Commonwealth of Nations, also known as the Old Dominions: Canada, Australia, New Zealand, South Africa, Newfoundland, and Ireland (Hansen, 1999).

Whatever the motives that lay behind government initiatives on immigration between 1945 and 1948, the overall effect was to liberalise entry to the United Kingdom. This, however, was to prove to be the last historical period to exhibit such an approach, as we shall now see.

*The advent of illegal immigration law-making
and the 'bifurcated' approach, 1962–1976*

With the Commonwealth Immigrants Act 1962, all that changed. Reflecting a marked shift towards restriction, the Act was created to *prevent* any further non-White immigration to the UK (Dummett and Nicol, 1990; Layton-Henry, 1992). To that end, it made all CICC's, and CUKC's with passports issued outside the UK, subject to immigration and labour market controls. Only those with government-issued employment vouchers, of which there were few, were permitted to settle.

The 1962 Act also introduced, for the first time (Düvell, 2005: 26), controls with the explicit aim of reducing illegal immigration – the main focus of this history. Most notably, it created three new offences. These were: entering or remaining in the UK in contravention of immigration law; “knowingly harbouring” a person in contravention of immigration law; and altering immigration documents without legal authority.

This about-face was subsequently strengthened by the Commonwealth Immigrants Act 1968. This Act was a direct response to the Asian crisis in East Africa. An ‘Africanisation’ policy threatened the expulsion of 200,000 Indians from Kenya and the British government feared that those expelled would take up their legal rights to reside in the UK. To prevent that from happening, the 1968 Act restricted the right of entry and settlement, which hitherto had been enjoyed by all CUKC's, to only those CUKC's born in the UK, or who had one parent or grandparent born in the UK, or who had lived in the UK for five years or more.

Hansen argues that this advent of restrictionism, evident in the 1962 and 1968 Acts, was a reflection of British nationalism taking precedence over the honouring of Commonwealth promises (1999). The capstone to this restrictionist bent was the Immigration Act 1971. In sixty-three pages, it consolidated almost all previous legislation, thereby constituting at that time the most comprehensive immigration statute in British history. It also contains the legal source of the authority for the UK state to control immigration:

The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, and the power to give leave to remain in the United Kingdom, or to vary any leave under section 3(3)(a) (whether as regards duration or conditions), shall be exercised by the Secretary of State.

A major part of the Act was dedicated to a further tightening of access to citizenship. It created a new concept in nationality law, that of *patriality* or *right of abode*, by which CUKCs and other Commonwealth citizens had the right to remain in or enter the UK only if they, or their husband (if female), or their parents, or their grandparents, were born, adopted, naturalised, or registered in the United Kingdom, or had lived there for five years or more before 1 January 1973 (when the Act came into force). Non-patrials, by contrast, were subject to immigration control. The Act thus entrenched differences in citizenship rights on the basis of ancestral connection, and hence on race (Spencer, 1997: 143).

Importantly for the present study, the 1971 Act also contained two provisions that expressly targeted *illegal immigration* – just the second set of such provisions in UK history (the first set being those introduced by the 1962 Act). Each of the two provisions created a new criminal offence. The first was entering the UK without immigration permission, and was punishable by a maximum fine of £200, or with imprisonment of not more than six months, or both. The second criminal offence was assisting illegal entry or harbouring irregular entrants, and was punishable by a fine of not more than £400, or with imprisonment for not longer than six months, or both, though repeat offending could be punished by imprisonment of up to *seven* years. From this point, irregular immigration would be truly *illegal* immigration – a criminal offence, inviting sanctions under the UK's penal code.

It is due largely to the restrictionist character of the 1962, 1968, and 1971 Acts that the UK would come to be described by researchers as the Western world's first “would-be zero immigration country” (Layton-Henry, 1992). Yet, the United Kingdom can be said to have taken a *bifurcated* approach to immigration law-making, displaying a more liberal side, too. Most notably, on the same day that the majority of the 1971 Act came into force, 1 January 1973, the UK entered the European Single Market, thereby removing immigration controls to some 250 million nationals of the European Economic Community (EEC). Freedom of movement between member states was to be affirmed by the 1992 Maastricht Treaty, which established the European Union on 1 November 1993.

This more liberal dimension of immigration law-making found further expression in a second legislative initiative, that of *race relations*. Three race relations statutes were enacted in this fifteen-year period, reflecting a commitment to improving the integration of the UK's ethnic minorities through the reduction of unfair racial discrimination.

The Race Relations Act 1965 created two civil offences: discrimination in public places on the grounds of “colour, race, or ethnic or national origins”; and “incitement to racial hatred”. It also laid the statutory framework for the creation of the Race Relations

Board, and the National Committee for Commonwealth Immigrants, to oversee the implementation and enforcement of the Act. These bare-bones provisions were expanded by the Race Relations Act 1968, whose bill Enoch Powell excoriated in his infamous “Rivers of Blood” speech. This second race relations Act expanded and clarified the contexts to which its notion of unfair discrimination applied. These included public places; the provision of goods, facilities, and services; employment, including by trade unions and professional organisations; housing and business premises; and advertisements and notices. It also replaced the National Committee for Commonwealth Immigrants with a newly created Community Relations Commission, charged with promoting “harmonious community relations”.

Yet it was the Race Relations Act 1976, the third of this period, that provided a truly comprehensive basis for the UK’s liberal approach to immigrant and ethnic minority integration. This statute, which incorporated the anti-discrimination legislation of the previous two race relations Acts, introduced a statutory duty for public bodies to promote race equality and to demonstrate that their procedures to prevent racial discrimination were effective. The 1976 Act also established the Commission for Racial Equality (CRE), to replace both the Race Relations Board and Community Relations Commission, to review the legislation periodically, and ensure its rules were followed. The CRE was also endowed with the power to set guidelines for the government and issue legally-binding non-discrimination notices.

It is in this period that the currently dominant “bifurcated” approach to immigration law was established and entrenched (Somerville, 2007: 18). The two branches diverge on a liberal-restrictive axis. The first branch entailed tight immigration restriction: the ‘zero immigration’ approach evinced by the ’62, ’68, and ’71 Acts. The second branch incorporated an emphasis on the effective integration of immigrants into British society: the ‘race relations’ approach.

It might appear that such a divergence of approaches would be difficult to rationalise, in that liberalism and restrictionism can be construed as polar opposites. However, it was Labour MP Roy Hattersley who sought to reconcile them. In a speech to Parliament in 1965, while a junior Home Office minister, he declared that, “Integration without control is impossible, but control without integration is indefensible”, giving rise to what has been called the “Hattersley equation” (Saggar, 1992: 90).

Restrictions on asylum and illegal immigration, 1979–1997

This third period comprises eighteen years of unbroken Tory rule, composed of five successive governments, three of Margaret Thatcher followed by two of John Major. Over this time, legislation continued along much the same path: towards ever greater restriction. It did, however, initiate a change of focus, away from migration from the Caribbean and Commonwealth, especially South Asia, to that from: (1) Eastern Europe, following the break-up of the Soviet Union; (2) Africa, following conflicts in Somalia and elsewhere; and (3) the British colonies, especially Hong Kong. The underlying motivation for this change of focus was the rapid growth in refugee streams from these places, which made *asylum* the central preoccupation of legislation in this period, coupled with a perceived need to keep foreigners out.

Yet at the start of this period, when the Thatcher administration assumed office, it was another issue that constituted the main focus of public attention, with anxieties stirred by a sensationalist tabloid press. This was the concern that marriage was being exploited for immigration advantage, a concern that persists to this day and is reflected in the Immigration Bill's provisions on "sham marriages". Thus, one of the central pillars of the Thatcher government's first statute, the British Nationality Act 1981, prescribed that women married to British men could no longer acquire citizenship solely by virtue of that marriage.

The 1981 Act also reformed British citizenship law in more substantial ways. This was the third time since the end of the war, and brought about a further tightening of the criteria for naturalisation. Restrictions were twofold. First, Citizenship of the United Kingdom and Colonies (CUKC) was split into three categories: British citizenship; British Dependent Territories citizenship (BDTC); and British Overseas citizenship. Only those belonging to the first category, British citizens, would be granted the right of abode. Second, the Act modified the application of *jus soli* in the acquisition of British nationality, such that being born in the UK no longer entitled a person to British citizenship; one must also have had at least one parent who is either a British citizen, or had enjoyed permanent residence.

Shortly thereafter, in February 1983, the Government introduced via a change to secondary legislation what became known as the "primary purpose rule". This provision sought to make it more difficult to gain an immigration advantage through marriage, by stipulating that a person seeking admission to the UK, or an extension of their stay, for the purposes of marriage to a person settled in the UK, must have their application refused unless they can demonstrate that it is *not* the primary purpose of the marriage to

obtain admission to the UK. The rule was contentious and viewed by judges as “unfair”, not least because of its requirement that couples prove a negative (Justice, 1993: 8). Although this rule was not technically a test of the genuineness of a marriage, but of the main reason for it, it nevertheless came to be viewed as providing a clear indication of policy-makers’ concern over ‘marriages of convenience’.

Then came the first Act in British history whose *main purpose* was stated as the prevention of illegal immigration: the Immigration (Carriers’ Liability) Act 1987. This created a new civil offence: of vehicles, ships, or aircraft bringing passengers to the UK without the required entry documents. The fine was set at £1000 per inadmissible passenger. This is an example of what Zolberg has called “remote control” immigration measures, which refers to controls that operate *beyond the borders of the destination country* (2000, 2003; see also: Guiraudon and Joppke, 2001: 13-15; 2002).

There were two further Acts of importance in this period, both under the premiership of John Major: the Asylum and Immigration Appeals Act 1993, and the Asylum and Immigration Act 1996. The first of these was introduced in response to a sharp rise in the number of people seeking asylum in the UK, from 3,998 in 1988 to 44,840 in 1991 (Home Office, 1997). Its purpose was, in the words of Home Secretary Kenneth Baker, “the rapid rejection of a large number of unfounded claims” (Hansard, 2 July 1991, col 167). While the Act affirmed the primacy of the 1951 Convention on the Status of Refugees, thus acknowledging a liberal standpoint, it simultaneously provided for a trio of less-than-liberal measures: the fingerprinting of asylum applicants, to prevent multiple applications; the subjection of asylum seekers to inferior housing provision; and the creation of a streamlined appeal procedure enabling the quick rejection of claims certified as being “without foundation”.

In the two years following the 1993 Act, asylum applications continued to rise, and on 20 November 1995, the Home Secretary, Michael Howard, described to the House of Commons the scale of the problem (Hansard, 20 November, col 335):

...only 4 per cent of applicants are initially granted asylum, and only 4 per cent of appeals against refusal are allowed by the independent adjudicators. Seventy per cent of claims are made, not on arrival in this country, as one would expect of any genuine refugee, but after gaining entry on another basis, and often only when leave is about to expire or removal about to take place.

The Asylum and Immigration Appeals Act 1993 initially helped us to bring down decision times dramatically, from eighteen months to four for a new claim. But the relentless rise in claims has outstripped the improvements in our ability to process them.

By claiming asylum, those who have no basis to remain here can not only substantially prolong their stay, but gain access to benefit and housing at public expense. The population of asylum applicants has now reached 75,000. The annual cost in benefit alone is more than £200 million.

The Government's response was the Asylum and Immigration Act 1996. Its major provisions included: an extension of the 'fast track' appeals process so that all asylum applicants could potentially be caught by it; the substantial restriction of housing and benefits support to asylum seekers; and the certification of asylum claims as being without foundation if they related to countries designated as providing "in general no serious risk of persecution". These countries initially included Bulgaria, Cyprus, Ghana, India, Pakistan, Poland, and Romania.

The 1996 Act also contained two provisions related to the control of illegal immigration. The first was the creation of a new criminal offence of assisting, for gain, the entry of a person known or suspected of being an asylum seeker, or assisting people seeking to obtain leave by deception. This offence was liable to a maximum fine of £5,000. The second provision made employing those without permission to live and work in the UK a criminal offence, again with a maximum penalty of £5,000.

It is perhaps no coincidence that in the 1996 Act we find measures to combat illegal immigration alongside those imposing restrictions on asylum seekers. At the time, as suggested by the words of Michael Howard, there was much public, political and media discourse expressing concerns that the UK's asylum system was being exploited by 'illegal' or 'bogus' asylum applicants, those seeking asylum in the UK on the basis of a patently false claim.

We see here the conflation of the terms 'asylum seeker' and 'illegal immigrant', even though the former is not illegal. Any person arriving in the UK may engage their legal right under the 1951 United Nations Convention on the Status of Refugees to apply for asylum. Moreover, the correct descriptor for such a person is 'asylum seeker' or 'asylum applicant'; and they have the right to stay in the UK while awaiting a decision on their application. Added to this, the term 'asylum seeker' is also confused with 'refugee'. This too is factually incorrect and so misleading. A refugee has by definition had their claim for asylum accepted, either by Home Office officials or an immigration judge.

For the present study, it follows that one should not classify provisions to facilitate the swift rejection of asylum applications as illegal immigration law. First, it is the legal right of any person to submit such an application within the UK, a country that is party to the 1951 Refugee Convention. Second, there are no legal penalties for having submitted

a claim later found to be unsuccessful or fraudulent. This is because such applications as are determined to have been ‘bogus’ may only be so determined after their consideration by a Home Office immigration official or judge.

This third period of immigration legislation can be recognised for its fresh measures to reduce illegal immigration and restrict asylum. Yet, in most other respects it can be seen to be a period of relative continuity. The ‘bifurcated’ legal model of *liberal race relations* and *restrictive control*, excepting EEA free movement agreements, remained intact. How then, would illegal immigration law-making and illegal immigration law under Labour compare?

The ‘Golden Age’ of illegal immigration law-making, 1997–2007

The Labour Party’s thirteen-year rule across four governments, three under Tony Blair ministries and one under Gordon Brown, was witness to the most active period of immigration law-making in the history of the United Kingdom. It has been described as “nothing short of hyperactive”, with ten Acts passed on immigration and asylum, the publication of “countless” policy documents, and the establishment of the Migration Advisory Committee and the (defunct) UK Border Agency (Consterdine and Hampshire, 2014: 277-278). Yet, as for the preceding Conservative ministries, this period also displayed ambivalence: a restrictive approach to asylum, alongside a liberal approach to economic migration, termed “managed migration”.

It was also the time during which legislation exhibited its strongest focus on the regulation of illegal immigration, with this the predominant theme in several Acts of this period. Surprisingly, illegal immigration provisions receive just a single cursory mention in the histories of this period (Consterdine and Hampshire, 2014; Consterdine, 2015a: 1441). But, make no mistake, this was indeed the ‘Golden Age’ of illegal immigration law-making.

Somerville characterises the first Labour ministry, from 1997 to 2001 when Jack Straw was Home Secretary, as comprising two distinct ‘phases’ (2007: 20). The first phase saw immediate changes in response to core supporters (Hussain, 2001: 209-16). The “primary purpose rule” was abolished; and the Human Rights Act 1998 incorporated the rights contained in the European Convention on Human Rights, into UK law. This phase was marked by a more liberal approach to immigration.

By contrast, the second phase saw steps taken to tighten the asylum system and clear asylum backlogs. Here the New Labour Government produced the Immigration and

Asylum Act 1999, regarded as “probably the greatest tightening of controls since 1905” (Cohen, 2002: 143-4. This makes reference to the Aliens Act 1905, which is widely viewed as marking the end of the UK's ‘open door’ immigration policy⁴⁰ (Cohen, 2002: 143-4).

In addition to restricting welfare benefits for asylum seekers and appeals against immigration decisions, the Immigration and Asylum Act 1999 contained four major initiatives for the regulation of illegal immigration, viewed by commentators to be in response to a report by French police that as many as 20,000 thousand asylum seekers would arrive in Britain that year by lorry (Webster, 1999).

First, the Act contained provisions for a new power to impose a civil penalty on persons responsible for the transport of clandestine entrants to the UK. This replaced and strengthened the similar power introduced by the Immigration (Carriers' Liability) Act 1987, with the fine now set at £2000. Second, the Act increased the number of airline liaison officers based overseas, to curb the number of immigrants travelling to the UK without proper documents. Third, the Act contained further provisions on what in the 2014 Act are termed “sham marriages”. It empowered registrars to request the name, age, marital status and nationality of couples, and to refuse to give authority to the marriage if they considered it “suspicious”. At the same time, it introduced a *duty* on registrars to report marriages they suspected to have been arranged to evade immigration controls. Fourth, the Act substantially extended the powers of immigration officers to arrest, search, and take fingerprints, without the presence of police officers.

One can state categorically that no statute prior to the Immigration and Asylum Act 1999 had contained such focused attention on the prevention of illegal immigration. Historically, therefore, it may be viewed as the pivot upon which the UK swung into the age of illegal immigration law-making.

Historically, therefore, it may be viewed as the pivot upon which the UK swung into the age of illegal immigration law-making. In spite of this, however, greater scholarly attention has been paid to a synchronous development of immigration policy-making,

⁴⁰ The metaphor of the ‘open door’ paints a vivid and in some senses insightful picture of immigration control, but it is not appropriate here. A door is always part of some larger entity, which it provides entrance to. In this metaphor, it is clear what entity the door is a part of and where it leads: ‘Residence Britain’. But doors can also be shut, to keep people out. They are a mechanism by which people can enter, or be denied entry, to a place. However, before the 1905 Act, there was no such mechanism. There was no immigration system, no immigration officers, no ports of entry, no bureaucracy, and no established body of immigration law. Passports did not even include photographs of the holder, which were introduced in 1914. In short, before 1905 there was no door. It was the 1905 Act that created one.

focusing on Labour's newly devised "managed migration". This was viewed as a *liberal* approach to economic immigration, with an emphasis upon the role of the UK in a globalised economy (Consterdine and Hampshire, 2014; Consterdine, 2015a). It was also considered to be "*pro-active*, rather than reactive" (Somerville, 2007: 22; emphasis in original) and so was clearly distinct from the reactive and restrictive characteristics typical of illegal immigration law-making. Between 2001 and 2007, there were four major Acts that included several important clauses to combat illegal immigration. This theme has been somewhat neglected, overshadowed by the interest shown in Labour's migration management. To explore those provisions on illegal immigration more fully, each of these Acts is dealt with in turn.

The Nationality, Immigration and Asylum Act 2002

Amidst concerns about the loyalty to the UK of the country's immigrant and ethnic minority groups, especially the loyalty of its Muslims following 9/11, the 2002 Act instituted the 'Life in the United Kingdom' test for everyone seeking naturalisation or permanent residence. This was accompanied by a language requirement for applicants, who would have to demonstrate sufficient proficiency in English, Welsh or Scottish Gaelic. Those applicants who were successful would then participate in new citizenship ceremonies. Here they were required to take an oath of allegiance to the Queen, or a non-religious "affirmation" of allegiance, and to then read aloud a citizenship pledge:

I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.

In addition to further restricting the appeals system, and providing a statutory basis for a new kind of accommodation centre to house asylum seekers and their dependants, the Act contained four major provisions aimed at dealing with irregular immigration and immigrants. It was again prompted by public and political concern that the government was not doing enough to either *prevent* clandestine entry, or *deport* clandestine entrants. Such views were spurred by alarmist media coverage of stowaways in trucks, as was highlighted by the discovery, in June 2000, of fifty-eight dead Chinese immigrants, who had suffocated on their journey (BBC News, 2000).

Taking each of these major provisions in turn, first the Act gave additional powers to facilitate the removal of irregular immigrants: for detainee custody officers to enter private premises to search persons being detained; for children born in the UK to parents who entered the country unlawfully to be removed; and for the removal of those who attempted to obtain permission to stay by using deception. Second, the Act introduced a scheme to require physical data, such as iris or facial images, to accompany immigration applications. Third, it created three new criminal offences: assisting unlawful immigration; trafficking people into, out of, or within the UK for the purposes of prostitution; and failure to comply with a notice requesting information due to a suspicion of immigration offending. Fourth, the 2002 Act expanded the powers of police and immigration officers, enabling them to enter business premises to search for and arrest immigration offenders, and to seize and inspect personal records following the arrest of an immigration offender on those premises. Illegal immigration was now the *principal* theme in Labour's immigration law-making. But would the subsequent Acts from Labour governments continue in the same manner?

Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

Yes. In addition to further limiting appeals and benefits for asylum seekers, and introducing regulations on immigration advisers, it introduced six provisions to bring illegal immigration further under government control.

The first provision created a new criminal offence of arriving in the UK without a valid travel document without a reasonable excuse for not having one. Purposely discarding or destroying travel documents were specified as invalid excuses. The second provision broadened the criminal offence of trafficking in the 2002 Act, extending it to the trafficking of persons for the purposes of exploitation of a *non-sexual* nature. Third, prefiguring similar provisions in the 2013-14 Bill, the 2004 Act endowed immigration officers with powers of arrest, entry, search, and the taking of fingerprints. The fourth provision, again reflecting concern with issues that are manifest in the Immigration Bill, targeted "sham marriages", by requiring parties to a marriage involving a non-EEA national to give written notice of their marriage and receive its approval from the Secretary of State. The fifth initiative was intended to prevent the absconding of persons subject to immigration control, especially asylum seekers, via electronic monitoring, including tagging and tracking, and the application of voice recognition in immigrant identification. Finally, a sixth provision empowered the Immigration Services Commissioner to enter

premises where he suspects there is material likely to be of substantial value to an investigation of a criminal immigration offence.

Taken together, these six provisions equated to a concerted and conspicuous attempt to crack down on irregular immigrants and immigration. Never had a piece of immigration legislation displayed such an extensive preoccupation with resolving this vexing problem.

Immigration, Asylum and Nationality Act 2006

The third Act of this second phase in Labour rule continued the now long-standing and cross-party tradition of tightening the asylum system and limiting rights of appeal against immigration decisions. The 2006 Act granted the Secretary of State the power to deprive individuals of British citizenship – a power to be later extended in the 2013-14 Bill – if the Home Secretary deemed it “conducive to the public good” and the individual would not be rendered stateless as a result. This legislation also continued the more recent trend – introduced in 1962, solidified in the 1971 Act, and then deepened by Labour – of legislating to reduce illegal immigration. A major impetus seems to have been the death of twenty Chinese cockle-pickers, whose dead bodies were discovered on the shores of Morecambe Bay in February 2004. This may be seen to have renewed and intensified alarm over ‘illegal workers’, especially in the tabloid press, which suggested the government had no control over the issue.

It is against this backcloth that the 2006 Act devoted significant space to measures aimed at ameliorating illegal migrant working. Two dovetailing provisions are especially noteworthy, which continued a third trend: of creating new civil and criminal offences relating to immigration. The first provision created a new criminal offence of knowingly employing an adult who does not have permission to be in the UK, or does not have permission to work, due to their immigrant status, such as being a student, which forbids full-time work. Violation of this law could be punishable by up to two years in prison and an unlimited fine. This was buttressed by a new civil penalty scheme, the second provision, which that introduced on-the-spot fines for employers of persons without immigration permission. These fines were severe: up to £2,000 per irregular immigrant worker.

These restrictions on work were supplemented with two further initiatives, aimed at preventing the flow of irregular immigrants into the country. The first concerned the surveillance and investigation of suspected irregular immigrants, empowering immigration officers to verify and confiscate passengers’ identity documents and require

the holders of such documents to provide biometric information. The second related provision granted a power to the Secretary of State to require or enable an immigration officer to obtain advance information on passengers, freight, or crew of any ship or aircraft leaving or arriving at the UK.

UK Borders Act 2007

The fourth and final Act in this period of illegal immigration law-making again concentrated upon the 'threat' posed by irregular immigrants, with a focus, following the 7/7 attacks in London, upon security. It granted immigration officers with police-like powers of detention, entry, search, and seizure. It introduced the power to impose compulsory biometric identity documents for non-EEA immigrants, and granted the Home Secretary wide-ranging powers to retain and share biometric information. It also created a new regime to prevent visa overstaying by immigrants granted time-limited permission to reside in the UK, via regular reporting to the UK Border Agency and the submission of an immigrant's proof of residence at a specific address.

In the same year, the points-based immigration system was introduced through secondary legislation. This was a five-tier system setting out criteria for migrants' entry to the UK, which replaced all previous work permits and entry schemes. It gave highest priority to highly skilled immigrants; and lower priority to unskilled workers, students, and temporary workers.

A trio of further Acts with relevance to immigration were passed in the final three years of Labour rule. Only one was a dedicated immigration statute, the Borders, Citizenship and Immigration Act 2009. Although an extensive piece of legislation, bringing further restrictions to appeals and ever greater powers to immigration officers – it contained no provisions related to illegal immigration, and so falls outside our fourth period of law-making. A second statute, the Criminal Justice and Immigration Act 2008, contained (in spite of its title) just one noteworthy provision related to immigration, and twenty-one related to the criminal justice system. The last statute of these three years, before the formation of the Coalition Government, was the Equality Act 2010. This consolidated the array of primary and secondary legislation that formed the basis of UK anti-discrimination law, including discrimination against foreigners, its otherwise only connection to

immigration. Thereafter, it would not be until 2013 that a British government would announce the development of another immigration statute.

Continuity and change

Considered as a whole, the UK's immigration law-making in the post-war era may be said to have transformed the country's dealings with migrants. More than this, it has brought profound change to every major facet of British life. Yet the law-making over these seven decades was not conceived as a whole, still less a coherent one. It unfurled piecemeal, in an ad-hoc fashion, through no fewer than twenty-one major Parliamentary Acts. As such, we are presented with an intricate history that resists easy thematisation. Certainly, one finds no unilinear progression, no single trend to unite the development of immigration law throughout this period. Nor do we find a *multi*-linear progression, comprising separate lines of asynchronous development, with each type of immigration law moving towards some identifiable telos. Rather, we find a process that is both multifaceted and multidirectional, comprising several, often interrelated, elements, each travelling a variable and sometimes ambivalent course. To adapt a phrase from one researcher, it is very much a case of "one step forward, two steps back" (Consterdine, 2013), to which one is tempted to add: then three steps left, and four steps right!

Yet, in spite of this complexity, the development of immigration law is, of course, far from random. The challenge though is to identify the patterns that exist amidst the apparent chaos, requiring the investigator to deploy some analytic tools. The first is to apply a disaggregated conception of immigration law. In the prior analysis this enabled the author to chart developments spanning five legislative domains: labour, citizenship, asylum, race relations and, the focus of this study, illegal immigration. The second is to utilise the liberal/restrictive binary, according to which the bent of a legal provision may be described, and law-makers' 'direction of travel' discerned. This is necessary to be able to make use of our third set of analytic tools, which are indispensable to the historian: continuity and change. Deploying these three conceptual instruments, we may draw the following portrait of the key patterns of the UK's immigration law-making for the whole of the post-war period.

From 1945 to 1948, British immigration law-making reflected a general trend towards liberalism, with its borders opened to people from Poland and from the colonies. However, 1962 signalled the end of this general liberalisation, with an Act that not only introduced illegal immigration law to the statute book, but also introduced labour market

controls and more restrictive routes to citizenship, thereby marking the beginning of restrictive trends in the enactment of law in those two areas, trends which have persisted to this day without deviation.

The proclivity towards the restriction of labour migration did not last quite so long. That ended forty-nine years after 1962 with the initiation of 'managed migration' under Labour, a policy ended abruptly by the Coalition on its election to government in 2010. Another theme can be identified from 1965 with the introduction of the race relations agenda, which created an entirely new area of law-making relating to the harmonious incorporation of immigrants into the societal mainstream. It is here that we can also detect the beginnings of the bifurcated approach to immigration law-making, where the emphasis on restrictive control in the domains of labour, asylum and citizenship is accompanied by the liberalist character of race relations law.

These patterns of continuity and change are depicted in Figure 6. From this, we can see that the UK's immigration law-making in this period may admit of broad characterisation after all. From 1962 to 2013, legislative developments in fact conform to a single trend, that of *restrictionism*. To this general rule, there are just two exceptions, both simple: law-making on race relations, which has always been liberal; and 'managed migration' under Labour, from 2001 to 2010.

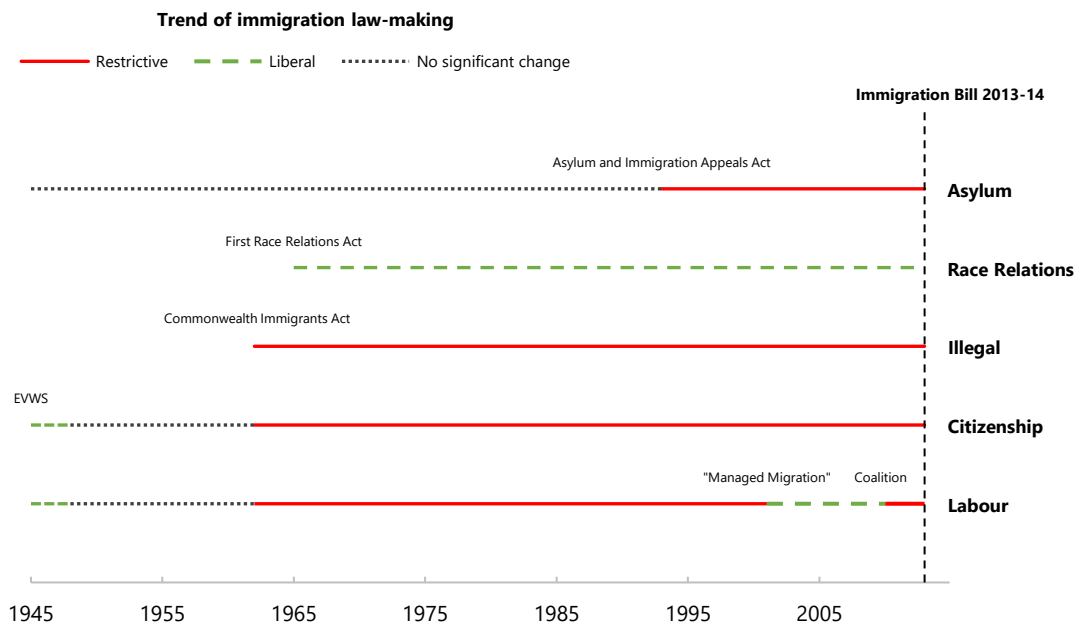


Figure 6 Patterns of continuity and change in the UK's immigration law-making, 1945–2013

In this history of the UK's major post-war immigration law-making, our focus has been on immigration *Acts*, the primary form of law and source of the foundation and structure of the UK's immigration regime. However, for each of these pieces of legislation to have become immigration Acts, they must have successfully traversed an elaborate multi-stage Parliamentary process. Therefore, before we turn our attention to the next major piece of immigration legislation in Britain's history, the Immigration Bill 2013-14, which was introduced to Parliament after a four-year hiatus in the development of immigration statute, we must first examine, stage-by-stage, the UK's Parliamentary process. That is the subject of our next chapter.

7 The legislative process

Before turning to the details of the Immigration Bill's passage through Parliament, let us first consider briefly the general framework under which all executive-initiated bills are developed and enacted. This includes a pre-legislative and post-legislative or Parliamentary process, the latter proceeding through several stages, each with its own institutional design and function. These stages give structure to the remainder of the thesis, which is ordered chronologically (for a more detailed account of the UK legislative process see Zander, 2004).

The decision to legislate

First of all, what is a bill? There are two kinds: public bills, which are proposed laws that apply to the general population of one or more countries of the UK and if enacted become public law – the 'law of the land' throughout their jurisdiction; and private bills, which are proposals for laws that apply to (1) individuals (known as private or personal Acts), such as those which have historically granted British nationality to foreigners; and (2) organisations, such as local authorities (known as local acts).

Today, almost all bills are public bills, and these too divide into two types: *government bills*, of which the Immigration Bill is an example, and *private members' bills*. Government bills are authored and introduced to Parliament by the executive, whilst private members' bills are authored and introduced by MPs, and Peers who are not government ministers; that is, are from government-supporting parties (backbenchers), opposition parties (frontbenchers or backbenchers), or are independents or Crossbenchers (non-party political Peers).

Both kinds of public bill constitute draft proposals for new laws, or changes to existing laws, presented for scrutiny, discussion, and amendment in the Houses of Parliament. In the UK's parliamentary system, all proposed legislation must receive the approval of both Houses of Parliament to become law.

Some bills are published in full draft form before introduction to Parliament, so that they may undergo a process known as 'pre-legislative scrutiny' in which they are considered by a Parliamentary committee or committees. These committees may

invite, receive and consider evidence and will make recommendations to the executive branch of government based on this evidence as well as the content of the legislation.

Because consultation involves the executive and not Parliament, this pre-legislative phase need not concern us here – although I can confirm on the basis of a detailed analysis of the Bill’s consultation phase that there is no evidence to suggest it changed the Government’s proposals.

The Parliamentary process

In the UK, a bill’s passage through the legislature proceeds in stages. Typically, there are at least eleven stages, each with its own institutional design, (more informal) conventions, and function. A bill can start in either the House of Commons or the House of Lords, depending upon its subject. Bills that concern taxation or public expenditure, for example, originate in the Commons, whereas bills relating to the judicial system tend to begin their passage in the Lords. However, all bills must be approved *in the same form* by *both* Houses of Parliament, the Immigration Bill being no exception. In fact, in all other major respects, the Immigration Bill’s Parliamentary passage was unexceptional. It passed through all stages, which functioned as expected. A brief description of each Parliamentary stage follows, given in the order in which the Immigration Bill passed through them.

The House of Commons

(1) First Reading

The first Parliamentary stage of a public bill is its First Reading. This takes place in the Commons Chamber, also known as the Floor of the House, which is the main debating room of the House of Commons, as distinct from smaller committee rooms. Here, the short title of a bill is read aloud, which is followed by an order for the bill to be printed. This first stage is a formality and takes place without discussion or a vote. Shortly thereafter, the bill is published in full as a House of Commons paper, which is freely accessible online.

(2) Second Reading

This stage provides an opportunity for MPs to debate the general principles and policies of a bill. It begins with the minister of the department with overall responsibility for the bill – here, Theresa May of the Home Office – describing and justifying its legislative proposals.

After the minister has finished, the spokesperson of the Official Opposition – for the Immigration Bill, Labour’s Shadow Home Secretary, Yvette Cooper – responds with their own views on the Bill. A basic rule that applies in both Houses is that only one person is permitted to hold the floor at any one time. However, MPs may briefly interject to request that the person currently speaking ‘give way’ and relinquish the floor to allow the interjector to make a brief intervention, such as a query or statement. However, it is the prerogative of the Member holding the floor to decide whether or not to give way.

The debate then continues. Any MP is permitted to attend and speak. These debates usually take all day, in practice around six hours. At the end of the debate, MPs vote on whether the bill before them should proceed to the Committee stage. If votes are not unanimously in favour of a bill, then we have what is known as a ‘division’, which represents a clear and direct challenge to the principle of a bill. If more votes are registered in opposition to the bill’s passage, its life ends. It is highly unusual for bills to not be approved by the Commons at Second Reading; a defeat here usually signifies a major loss for the Government. The last time a bill was rejected by the House of Commons at this stage was in 1986 under Margaret Thatcher.

(3) Public Bill Committee

The adversarial, turn-taking character of the Second Reading stage is retained for Committee, in which non-Government Members conduct detailed line-by-line examination of a bill’s clauses. At Committee, the Government is able to receive written and oral evidence from experts and interest groups beyond Parliament. The Committee considers each clause of the bill, and proposes changes to it, known as ‘amendments’. Proposals to amend the bill are selected for debate by the Chairman of the Committee. The person who proposed the amendment will then explain why it is required, after which the Government’s spokesperson, usually a departmental minister, will respond to Opposition criticism. In the light of the minister’s response, the Member proposing the amendment may choose to withdraw it, if they are satisfied with the Government’s response, or put it to a

vote. If an amendment is pushed to a vote, and the Committee's members vote by a majority in support of the amendment, then the bill is changed according to the amendment.

The passage of public bills is strictly timetabled, and as such there is limited time to discuss them at Committee. This means the Committee's Chair must be selective in deciding which issues will be discussed. Membership on Public Bill Committees is also limited, usually to between sixteen and twenty-five MPs.

The Committee stage will often comprise multiple sessions or 'sittings', of about two hours each. The Immigration Bill had eleven sittings, taking place over a three-week period (from 29 October to 19 November 2013). At the final sitting of the Committee, there is no deciding vote, with a bill proceeding automatically to the next Parliamentary stage.

(4) Report

This stage provides an opportunity for any MP, and not just a select group as in the Public Bill Committee, to debate further amendments to a bill. Unlike the Committee, the House need not consider every clause of the bill, but only those on which amendments have been proposed or 'tabled'. For lengthy and complicated bills such as the Immigration Bill, debates may be spread over several days, if time permits. As in Committee, there is no vote on whether the whole bill should proceed to the next stage, which it does by default.

(5) Third Reading

This fifth stage in a bill's development is the final opportunity for MPs to debate the final text of the bill, as amended in earlier Commons stages. As for Report, any MP may participate. Debate is usually short, however, and no amendments can be made. At the end of the debate, the House votes on whether to approve the bill. If more votes are received in support of it, the legislation proceeds to the House of Lords, where it is subjected to a further five stages of scrutiny. It is possible for the Lords to reject the bill, though the Commons may force it through without the approval of the upper House in the following session of Parliament.

The House of Lords

(6) First Reading

Once a bill arrives in the House of Lords from the Commons, it receives its First Reading. This is the same as the First Reading stage in the lower House, a formality taking place without debate, with one exception: it is not the bill's short title that is read aloud, but its long title, which provides additional indication of the bill's content. Once a bill has received this formal introduction, it is published, both in print and online in digital format.

(7) Second Reading

Like its Commons namesake, Second Reading in the Lords provides the first opportunity for members to debate the main principles and purpose of a bill. Before this Second Reading debate takes place, Peers who would like to make an intervention add their name to a list, the 'speakers list'. At the conclusion to this stage, the House votes on whether the bill placed before it should be progressed to the next stage, Lords Committee.

(8) Committee

As in the Commons, the Lords Committee stage involves line-by-line scrutiny of all aspects of a bill. Unlike in the Commons, where Committees typically comprise no more than twenty-five MPs, any member of the House of Lords may take part in the debate and table amendments.

There are further differences between the Houses. In the Lords, unlike in the Commons, the Government cannot restrict the subjects to be discussed and there is no time limit on discussions. At this stage, every clause of the bill has to be agreed to, and all suggested changes be considered. At the end of Lords Committee, which can last more than a week, the legislation progresses automatically to the next stage.

(9) Report

The Report stage in the Lords provides an opportunity for the detailed examination of a bill to continue, and is the final point in the Lords at which a bill can be amended. There is no final vote, and a bill proceeds automatically to the next, and perhaps final, Lords stage.

(10) Third Reading

Third Reading in the Lords provides Peers with the opportunity to “tidy up” a bill, as Lords often describe it, to ensure that the law enacted is practical, effective, and “without loopholes”. Unlike at Third Reading in the Commons, amendments can be made, though they are usually moved by the Government as a means of making good on any promises it made at earlier stages.

(11+) Consideration of amendments and Ping Pong

In this final set of stages in the life of a bill, the legislation is returned to the House where it started, for the consideration of any amendments made by the other House. For the Immigration Bill, this meant it was returned to the Commons, whose MPs may make further changes if desired. If they do make any changes, the legislation must then be returned to the Lords, who must either agree or disagree with MPs’ amendments, or make alternative proposals. If the Lords disagrees with any Commons amendments, or makes alternative proposals, then the bill is sent back to the Commons, who may do likewise. In this way, a bill may go back and forth in quick succession between each House, reminiscent of a ball in a game of table tennis, hence the name, until both Houses reach agreement on its exact wording.

Once a bill has passed through all the preceding stages, it goes on to receive Royal Assent, the method by which the UK’s constitutional monarch formally approves the version of the legislation agreed upon by the legislature, thus converting it into an Act of Parliament, and hence law. The legislative process described in this chapter is summarised by Figure 7.

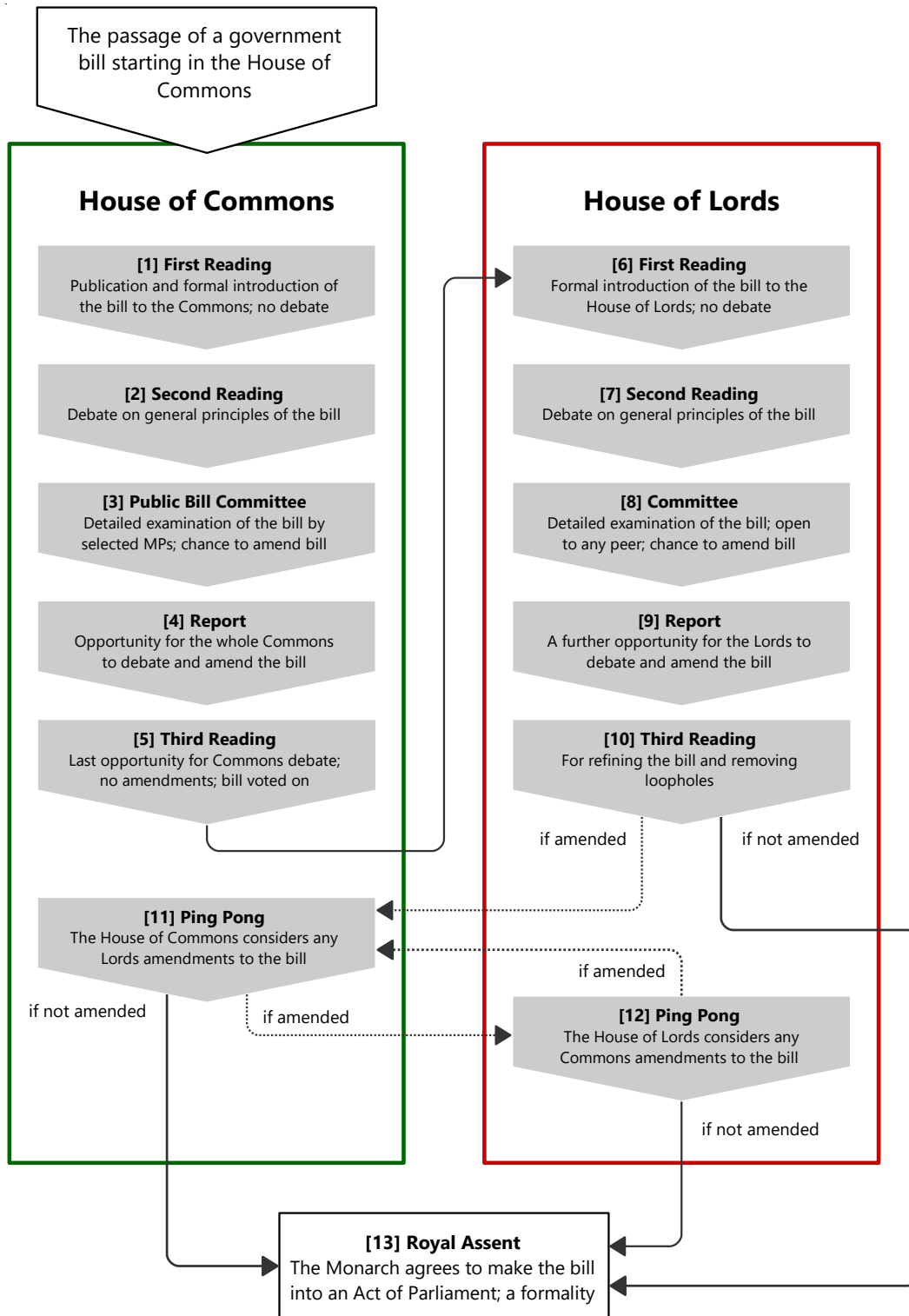


Figure 7 The multi-stage Parliamentary process of a government-drafted Act

8 The Commons: Second Reading

In the remaining chapters of this thesis, I analyse the role of Parliament in the shaping of the Immigration Bill. I present a detailed, mostly chronological narrative of the UK legislature's scrutiny of the Immigration Bill, examine Parliament's institutional structure and political dynamics, and try to explain why it had the influence it did, if, indeed, it had any.

Introducing the Bill to Parliament

Around six months after its first public announcement in the House of Commons, the first version of the Immigration Bill was published, by the Home Office, on 10 October 2013. In revealing the Coalition's policy, Theresa May, repeating remarks that she made in May 2012⁴¹, described the main purpose of the Bill in the following way:

to create a really hostile environment for illegal immigrants. (Travis, 2013b)

Explaining the Bill's focus on "illegal immigrants", May stated:

Most people will say it can't be fair for people who have no right to be here in the UK to continue to exist as everybody else does with bank accounts, with driving licences, and with access to rented accommodation. We are going to be changing that because we don't think that is fair. (Travis, 2013b)

When introduced to the House of Commons, the Bill was supplemented by fifty-four pages of "Explanatory Notes", which outlined its provisions in more accessible language; and a four-page "Immigration Bill Factsheet", which provided the following overview of the prospective legislation (Home Office, 2013b: 1-2):

⁴¹ In an interview with the *Telegraph* newspaper, Theresa May said, "The aim is to create here in Britain a really hostile environment for illegal migration." (Kirkup and Winnett, 2012)

As things stand, it is too easy for people to live and work in the UK illegally and take advantage of our public services. The appeals system is like a never-ending game of snakes and ladders, with almost 70,000 appeals heard every year. The winners are foreign criminals and immigration lawyers – while the losers are the victims of these crimes and the public. It is too difficult to get rid of people with no right to be here.

This is not fair to the British public and it is not fair to legitimate migrants who want to come and contribute to our society and economy.

What we are going to do:

- Reform the removals and appeals system, making it easier and quicker to remove those with no right to be here;
- End the abuse of Article 8 – the right to respect for private and family life;
- Prevent illegal immigrants accessing and abusing public services or the labour market.

How we are going to do it:

The Bill will make it:

(i) easier to identify illegal immigrants by extending:

- powers to collect and check fingerprints;
- powers to search for passports;
- powers to implement embarkation controls;
- powers to examine the status and credibility of migrants seeking to marry or enter into civil partnership.

(ii) easier to remove and deport illegal immigrants by:

- cutting the number of decisions that can be appealed from 17 to 4 – preserving appeals for those asserting fundamental rights;
- extending the number of non-suspensive appeals. Where there is no risk of serious irreversible harm, we should deport foreign criminals first and hear their appeal later;

- ensuring the courts have regard to Parliament's view of what the public interest requires when considering Article 8 of the European Court of Human Rights in immigration cases;
- restricting the ability of immigration detainees to apply repeatedly for bail if they have previously been refused it.

(iii) more difficult for illegal immigrants to live in the UK by:

- requiring private landlords to check the immigration status of their tenants, to prevent those with no right to live in the UK from accessing private rented housing;
- making it easier for the Home Office to recover unpaid civil penalties;
- prohibiting banks from opening current accounts for migrants identified as being in the UK unlawfully, by requiring banks to check against a database of known immigration offenders before opening accounts;
- introducing new powers to check driving licence applicants' immigration status before issuing a licence and revoking licences where immigrants are found to have overstayed in the UK.

Which of the Coalition parties were responsible for these proposals? Four measures appear to have been present in the Liberal Democrats' 2010 election manifesto: exit checks, the extension of immigration officers' powers, the deportation of foreign criminals, and a crackdown on irregular migrant working⁴². By contrast, none of the Conservatives' 2010 election manifesto pledges appear to have resurfaced in the Bill⁴³.

⁴² The Liberal Democrats' 2010 election manifesto promised to: (1) "Immediately reintroduce exit checks at all ports and airports"; (2) "Secure Britain's borders by giving a National Border Force police powers"; (3) "enforce any immigration system through rigorous checks on businesses and a crackdown on rogue employers who profit from illegal labour"; and (4) "Prioritise deportation efforts on criminals". (Liberal Democrats, 2010: 75-77)

⁴³ Under a system intended to "attract the brightest and best to our country", the Conservatives presented as their main goal in their 2010 election manifesto the reduction of "net migration back to the levels of the 1990s – tens of thousands a year, not hundreds of thousands"⁴³. To help achieve this goal, the Conservatives promised the introduction of the following three measures: "(1) setting an annual limit on the number of non-EU economic migrants admitted into the UK to live and work; (2) limiting access only to those who will bring the most value to the British economy; and (3) applying transitional controls as a matter of course in the future for all new EU Member States" (Conservative Party: 21). The remainder of the Conservatives' most substantial specific policies

On the basis of this ‘process-tracing’ of policies, from election commitments to draft legislation, one could reasonably infer that the Liberal Democrats had exerted a strong impact upon the Bill’s content. To be sure, Lib Dem negotiators had successfully removed from the Bill a plan for immigration checks in schools.

Yet this process tracing gives a misleading impression. The Liberal Democrats’ more progressive policies on asylum were not in the Bill and appear to have been dropped entirely⁴⁴ (except for their goal to end the detention of children for immigration purposes). In addition, much of the rest of the Bill they “detested”, according to one interviewee (others gave a consonant impression of strong disapproval), and their Coalition negotiators even disliked the four (more illiberal) of their election proposals that did appear to have made it into the Bill. In fact, revealed interviewees, in Coalition negotiations on immigration policy, the Conservatives were uncompromising; immigration was on their list of “non-negotiables”. And given that popular opinion was on the side of the Conservatives, the Liberal Democrats decided to devote their bargaining energies to policies that, unlike immigration, they had prioritised.

Over roughly the next six months, the Government’s principal aim would be to ensure the Bill’s “smooth passage” through Parliament, as one interviewee described it. By this is meant that the Immigration Bill would in around six months become the Immigration Act, *having been amended by non-Government Parliamentarians as little as possible*. To achieve this, the legislation would have to pass through at least eight substantive Parliamentary stages, some of which would entail line-by-line scrutiny and discussion of the executive’s legislative proposals in the debating chambers of the Houses of Parliament. At some stages, Parliamentarians would have the opportunity to table amendments to the Bill, and compel their respective House to vote on them. Any amendment that received majority support would be incorporated into the Bill.

concerned students, and were three: These policies were three: “(1) insist foreign students at new or unregistered institutions pay a bond in order to study in this country, to be repaid after the student has left the country at the end of their studies; (2) ensure foreign students can prove that they have the financial means to support themselves in the UK; and (3) require that students must usually leave the country and reapply if they want to switch to another course or apply for a work permit” (Conservative Party: 21).

⁴⁴ These included, according to the Liberal Democrats’ 2010 election manifesto: (1) Taking responsibility for asylum away from the Home Office and giving it to a wholly independent agency; (2) pushing for a co-ordinated EU-wide asylum system; and (3) allowing asylum seekers to work. saving taxpayers’ money and allowing them the dignity of earning their living instead of having to depend on handouts (Liberal Democrats, 2010: 76-77).

Our first Parliamentary stage, Commons Second Reading, allows for debates, but not the tabling of amendments and hence no modification to the Bill – although if the Bill does not receive more votes in its favour than against it, it will be thrown out and not proceed to the next stage. Given that governments typically enjoy a majority in the Commons, such an outcome is rare. Yet even if that were not to transpire, the events and discussions of this stage – and related behind-the-scenes activities – remain worthy of review, both to set the scene for what follows, but also because arguments raised at Second Reading would later prove to be influential in guiding scrutiny in later Parliamentary stages.

Backstage

After the Immigration Bill's publication on 10 October, MPs of the Official Opposition, as part of their Parliamentary role to scrutinise the Government's proposed legislation, worked to make sense of the Bill's 113 pages. The definition of a Parliamentarian's 'role' has no single formal source, but is guided by Parliamentary procedure and constitutional conventions, which form a part of the UK's uncoded constitution, comprising customs, legal precedent, and a variety of statutes and legal instruments (described in Erskine May's *Parliamentary Practice*; May, 1997). The Parliamentarian's responsibilities hence derive from elements straddling the first two dimensions of my POS framework, formal and legal institutions, as well as more informal procedures.

With the Second Reading debate scheduled for 22 October, just six Parliamentary sitting days after the Bill's introduction to the Commons, time was of the essence.

However, the MPs did not work alone. They were aided in their scrutiny by external groups (i.e., those outside Parliament), operating largely beyond public view. Four stand out: the Immigration Law Practitioners' Association (ILPA), Liberty, Justice, and the Joint Council for the Welfare of Immigrants (JCWI)⁴⁵. These

⁴⁵ ILPA is a professional association of over 1,000 members, mainly barristers, solicitors, and advocates, practising immigration law. Its aim is to improve immigration advice, representation, and most importantly, law, with this last aim served by campaigns and political lobbying. The second pressure group, Liberty, is one of the UK's leading advocacy groups, and campaigns to protect civil liberties and promote human rights. The third group, Justice, is an all-party membership organisation – primarily of the legal profession – that works to promote law reform and human rights. The fourth external organisation was the Joint Council for the Welfare of Immigrants (JCWI), an independent national

relationships, between lobbyists and Parliamentarians is long-standing, and has for decades formed the core of the political alliance structures from which effective Parliamentary scrutiny of legislation derives.

What motivates external groups to lobby? It depends on the group. Typically, the group in question will have an interest in doing so. In the case of Liberty, for example, its *raison d'être* is the promotion of civil liberties. Usually, Liberty will become active in the field should any legislation appear to expand state power and impinge on personal freedoms.

There are further considerations. Consistent with what POS's undergirding theory of collective action suggests, the incentive to lobby may be strengthened or weakened by the perceived likelihood of success: the greater the perceived chance of success, the stronger the incentive. This perception is determined by such factors as the politicisation of the issue, or, as predicted by Koopmans and Statham (2000: 34), the presence of splits within the Government.

To continue with our example of Liberty, they do not always intervene in immigration law-making. But given the well-known divide between the Coalition parties, its members believed that on this occasion their efforts could bear fruit.

Lobbying groups do not work in isolation outside Parliament. From a mobilisation of social organisational resources, especially the exploitation of their networks of contacts, they co-ordinate and pool their criticism, sharing data, ideas, and arguments – *intellectual resources* in the terms of my POS approach. Much of the lobbying of the Immigration Bill was co-ordinated by Alison Harvey, the Legal Director of ILPA, whom I interviewed for this research.

ILPA is an important actor in the field. It has substantial intellectual resources, accrued over its thirty-year history. And it also has some political capital. It is well-regarded by Parliamentarians, enjoying a hard-earned reputation as a credible voice in immigration policy analysis. Partly, this is due to the group's long-time presence in the field. Since its creation in 1984, ILPA has been involved in the development of every piece of major immigration legislation (Brazier *et al.*, 2009: 96). As Brazier *et al.* note, when the Government publishes a new immigration bill, it is usually ILPA that first works out what its provisions mean (Brazier *et al.*, 2009: 96).

This is no understatement. All the Parliamentarians I interviewed reported either being advised personally by ILPA or consulting the organisation's published materials.

charity that provides legal assistance to immigrants, and campaigns for a human rights approach to the formulation of immigration law.

One interviewee revealed being “utterly reliant” on the group. This, I learned, meant essentially being utterly reliant upon the advice of a single person: Alison Harvey.

It is Harvey that authors almost all of ILPA’s briefing material for Parliamentarians. Whatever influence and reputation ILPA publicly enjoys is thereby generated in no small part by her. When considered alongside her role as a coordinator of external lobbying groups, with whom she liaises and whose scrutiny she informs, Harvey emerges as an actor of some significance.

Interviewees’ shared the opinion that Harvey’s policy scrutiny is distinguished by its legal acuity. Yet more than this, it is the *volume* of Harvey’s policy critique that stands out. For the Immigration Bill, she produced comprehensive briefings at every stage of the legislative process, which included detailed amendments, many of which were then moved by Parliamentarians without modification. In total, ILPA published over one thousand pages of briefings for Parliamentarians (admittedly, containing some repetition) over a period of about six months. More impressive – if not astonishing – is that Harvey was virtually the sole author of it all. Less surprising is her explanation for such productivity: working long hours and having a strong grasp of the material. Indeed, it is difficult to escape the conclusion that Harvey is something of a workaholic, an immigration law obsessive. “Indefatigable”, as one Peer I interviewed said.

Yet despite Harvey’s expertise, there were places where even she struggled to make sense of the Bill’s many and complicated clauses. But despite such difficulties, the lobbyist, like the Parliamentarian, must make sense of the legislation before them. After all, Harvey would soon need to begin emailing Parliamentarians and lobbying groups, to assist them in their scrutiny.

At this stage, the main source of such assistance is a Second Reading ‘briefing’ document, which describes and critiques the principles and provisions of a Bill. This support is supplemented by emails, phone calls, and meetings, as required. ILPA’s briefing was fourteen pages, Liberty’s forty-six, Justice’s thirteen, and the JCWI’s nine. As for the other lobbyists I spoke with, Harvey targeted the Opposition frontbench, although some backbenchers were also contacted. Harvey estimates that her network, the majority of which were contacted, includes around 150 Peers, over 150 MPs, and two dozen or more lobbying groups – a substantial reservoir of social organisational resources accumulated over many years.

Working collaboratively, the lobbying groups can harmonise their Bill criticism, enhancing its strength. Liberty’s briefing document, developed in this way, was authored by Rachel Robinson and Isabella Sankey, both non-practising barristers,

Robinson with a background in immigration and asylum law, Sankey with specialisms in human rights, extradition, and surveillance. Like ILPA, Liberty has extensive reserves of intellectual resources, but also moral resources and political capital, deriving from a long and distinguished history of policy analysis and political intervention (their members can be seen in television and newspapers interviews, and occasionally author opinion pieces of their own). This heritage, allied to their focus on certain principles – liberty, equality, human rights, and the rule of law – endows their briefings with persuasive, ethically-informed arguments. Their discourse has, in the terms of POS, visibility, resonance, and legitimacy. The same applies to Justice.

But regardless of the expertise of these groups, and the quality of their arguments, their members nevertheless suggested that their battle was always going to be an uphill one. “There is little political appetite on the part of the two main parties to adopt a liberal position on immigration – such as that of the Liberal Democrats”, said one. “Immigration is one of the hardest areas to get people on board for”, said another.

Indeed, the lobbyists I spoke to were virtually unanimous in the view that during backstage negotiations with the Government, it soon became clear that the first draft of the Bill represented not a policy blueprint presented, in a spirit of co-operation, for amendment commensurate to the merit of outside views. Rather, it was an entrenched position, something to be defended. The problem, reported interviewees, was one of well-reasoned policy losing out to power politics. “The government are bombastic on immigration”, said one, “and largely unwilling to be swayed by argument”. “Any changes to the Bill”, said another, “would have to be fought for on the Floor of the House.”

This much was clear from the drafting process of the Bill, conducted with less consultation than usual, said interviewees, such that when the Bill was at Commons Second Reading, most NGOs (ILPA excepted) were not ready to brief MPs.

Thus, as the slight political opportunity to influence executive law-makers *during the Bill’s drafting* ended (known as the *pre-legislative* phase), another set of opportunities opened: those related to the Bill’s passage through Parliament.

The process of legislative scrutiny is one of the most challenging and underappreciated aspects of Parliamentarians’ work. The conscientious analysis required to effectively scrutinise bills seems a world away from the world of stump speeches and prime-time media appearances. Yet it is as important a part of a politician’s remit as the work they do before attentive audiences.

At this point, with the guidance of these external groups, MPs must compose their Second Reading speeches, which forms the central plank of their initial scrutiny.

Some MPs have dedicated policy teams, the research of which may be particularly fruitful to generating convincing policy critique. Others even employ speechwriters for the task. These constitute a particularly important part of Opposition MPs' alliance structure. However, someone like Jeremy Corbyn, then an unassuming backbencher, whom I interviewed, cannot afford a policy team, and must make do with the assistance of two constituency caseworkers. In addition, such a person must write their own speeches.

Frontstage

In the House of Commons, the responsibility for defending the Immigration Bill fell predominantly to the Immigration Minister, Conservative MP Mark Harper, although, per convention, the Home Secretary, Theresa May, introduced the Immigration Bill at Second Reading. At Commons Committee, Harper received assistance from the Liberal Democrat MP Norman Baker, then the Home Office Minister of State for Crime Prevention⁴⁶.

For the Official Opposition (here the Labour party), a great deal of the *public* scrutiny and criticism of a bill is undertaken, similarly, by one or two individuals in the respective Houses. For our case study, in the House of Commons this fell initially, again in accordance with Parliamentary convention, to the Shadow Home Secretary, then Yvette Cooper, with the Shadow Immigration Minister, Labour MP for Delyn David Hanson, taking on that role at Committee. In the Lords, the majority of the Labour Party's Parliamentary scrutiny was shouldered by two people who shared the workload roughly equally: Lord Rosser (Richard Rosser), then Shadow Spokesperson, and Baroness Smith (Angela Smith), then Opposition Deputy Chief Whip.

⁴⁶ Baker was one of two people interviewed for this research who acted as the Government's minister for the Bill. I spoke to him on the day he resigned from his post, when he said that support for "rational evidence-based policy" was in short supply at the Home Office, and likened his experience under May to "walking through mud" (Watt, 2014b).

Parliament's uneven playing field

In Parliamentary debates, the playing field is not level. Effective scrutiny of legislation is limited by two resources: human (especially intellectual) resources, and time. The distribution of these is decidedly uneven.

In designing and promoting policies, ministers draw upon the considerable apparatus of Government: its extensive human and intellectual resources of its civil servants, the policy-makers, researchers, and lawyers of its various departments. Ministers also benefit from the assistance of 'special advisors' or "SPAD"s as they are known colloquially. These are typically paid by governments and are styled as 'temporary civil servants', their principal role being to assist and advise ministers.

A minister's brief is typically prepared by between six and eight civil servants (eight in the case of the Bill), two of whom are usually government lawyers, and three of whom may commonly be seen sitting at the bench beside the minister – to give any assistance should the need arise.

In contrast, although Parliamentarians of the Official Opposition enjoy the assistance of secretaries, they usually have just one or two additional research staff, and must often carry out much of their scrutiny without formally-institutionalised expert help.

Opposition Parliamentarians do, however, have important 'informal' allies to help level the field. These are the aforementioned expert external actors working at lobbying groups such as ILPA or Liberty. In the struggle over immigration law, this relationship is of considerable importance, and one to which we will frequently return.

With regard to the second limit upon effective Parliamentary scrutiny, time, it is worth bearing in mind that the Government developed the Immigration Bill over a long period, of at least a year. This provides the opportunity for policy rationales to mature, such that by the time a bill is before Parliament the government's arguments may have reached a level of clarity or sophistication as to seem virtually unassailable. These arguments may, in addition, have the benefit of being highly visible, being well-known to the public via speeches, television interviews, and newspaper articles. That certainly helps with their resonance; indeed, that is virtually assured, along with legitimacy, in a country whose population is as anti-immigration as Britain's.

With regard to the Immigration Bill, although Opposition Parliamentarians' arguments would often seem initially so powerful as to invoke the familiar sense of "ah-ha!", ministers were seldom phased by such submissions. Most commonly, and this is especially true for Mark Harper, they provided eloquent and reasonable

responses. They had, one surmises, heard that argument before, backstage. And indeed, it is customary for challengers to inform the Government of the questions they will ask during Parliamentary debate.

In fact, for the Immigration Bill, the Government exploited its power over the legislative timetable so well that Justice, in their Second Reading briefing, were compelled to observe that (Patrick, 2013: 3):

...even the most expert organisations and individuals have struggled to provide detailed briefing within this timescale.

For the Immigration Bill, the Government's principal Spokesperson was the Home Secretary, Theresa May. The Bill, interviewees suggested, was predominantly *May's* brainchild. Intellectually and rhetorically formidable, and with the respect of her colleagues, May's serious, no-nonsense demeanour can be intimidating, inviting comparisons with Margaret Thatcher, the so-called "Iron Lady". It is this impression which one interviewee, himself a strong personality, presumably intended to convey in his description of May as "both the snake and the mongoose" – a reputation which appears to have been substantially dented in the light of May's failed attempt via a snap June 2017 election to increase her Parliamentary majority.

Recall that at Second Reading the Government's aim is clear: to describe, promote, and defend the underlying principles and main policies of the bill they are presenting to Parliament. At 12.43pm, May introduced her Bill to the House of Commons by first listing the Government's immigration successes. The Government had (Hansard, 22 October, col 156):

...introduced a limit on economic migration from outside the EU, cut out abuse of student visas and reformed family visas. As a result, net migration is down by a third.

May's next and fourth sentence would be interrupted by Labour MP Simon Danczuk, an intervention that May accepted with an exasperated chuckle ("Well, if the hon. Gentleman really wants to intervene."). "The Home Secretary says that net migration is down by a third", said Danczuk. "The reality is that it has fallen by only a quarter" (Hansard, 22 October 2013, col 156). The first salvo in what came to be termed by one Parliamentarian the "war of statistics" – a struggle over the rational high ground – had been fired.

May's initial response to Danczuk invoked Labour's opening of the UK to eight central and eastern European countries in 2004: "It is a bit cheeky for a Labour Member to stand up and complain about the figures for falling migration." (Hansard, 22 October 2013, col 156)

Labour MP Simon Hughes intervened quickly on May's riposte. His argument was related to the democratic properties of the Bill's development:

...there was no draft Bill, no Green Paper and no White Paper; there was consultation on only part of the Bill, and there are sensitive areas that need to be looked at across the board, including in connection with the legal aid changes. Why do we have to deal so quickly with such sensitive and difficult issues? (Hansard, 22 October 2013, col 156)

May replied: "I can assure him that there have already been a considerable number of discussions on the elements that have gone into the Bill" (Hansard, 22 October 2013, col 157).

For other Commons critics, the very existence of the Immigration Bill reflected a regrettable Home Office tendency to deal with problems by legislating rather than better management. David Heath, the Liberal Democrat MP for Somerton and Frome, enquired of May (Hansard, 22 October 2013, col 159): "Can she convince me that the Bill is not another example of the Home Office reaching for the statute book, rather than dealing with the management of the immigration service properly...?".

Ignoring the remark, the Home Secretary resolved to make some progress, though occasionally 'giving way' throughout. As a strategy of Parliamentary debate, giving way is not without its merits. Apart from making a minister look gracious, it impedes progress, allowing a minister to spend more time dealing with the often simpler and better-rehearsed provisions at the front end of the legislation, whilst limiting the opportunity to provide at the end of the debate the off-the-cuff responses that are necessitated by Parliamentarians' impromptu queries. Sometimes, as we shall at the Commons Report stage, business that a government would rather not deal with is strategically scheduled for later in a debate, leaving it vulnerable to a filibuster, thereby preventing its scrutiny.

Second Reading would come to be dominated by two of the Bill's measures: the reduction of appeal rights, and the landlord immigration checks. After May took her seat, the former proposal was criticised by the Opposition Spokesperson, the Shadow Home Secretary, Yvette Cooper (Hansard, 22 October 2013, col 176):

...it appears that the Government want to abolish appeals for whole categories of immigration cases because they cannot cope with the fact that they get so many decisions wrong in the first place. There are genuine and serious concerns about that approach because it turned out that the Government got it wrong in 50 per cent of entry clearance cases that went to appeal.

It is important at Second Reading to know whether the Official Opposition will oppose the Government's legislation. Without Labour's support, there would be a much stronger chance that the Bill would be thrown out. With it, that would be inconceivable. Hence, Labour's strategy would have major consequences for the structure of political opportunities in the rest of the legislative process.

Yvette Cooper would answer that question later in the debate. In the meantime, she probed how the Government's landlord provisions might work in practice:

The measures on landlords take up 16 clauses—a quarter of the Bill. This, it appears, is the Government's flagship policy on tackling illegal immigration. The only trouble is that we have no idea how it is supposed to work. There are more than 400 European identity documents, and the Government have not explained whether private landlords are supposed to know which one is which. (Hansard, 22 October 2013, col 172)

The Liberal Democrat MP, Sarah Teather, questioned the degree to which the Bill was made "in good faith", as interviewees were fond of saying, that is, made not for the rational furtherance of considered immigration goals, but in the service of power and political advantage. Teather said she was (Hansard, 22 October 2013, col 185):

...weary of a politics that creates and defines enemies in order to demonstrate potency...to see politics do that at the expense of those who have the least power to change their own futures. All three Front Benches, I am afraid, are at it, including my own, scrabbling over the mantle of toughness, chasing opinion polls and, in some cases, wilfully whipping up fear and loathing in the process.

Teather also added a now-familiar criticism: that the detail of the Bill seemed to have been negotiated “by an exceptionally tight group of people within the Government, and very little time is being afforded to this House to consider it” (Hansard, 22 October 2013, col 186), a view supported, or conceded, by almost all of my informants. So hurried was the timetable, said Teather, that external organisations were constantly playing catch-up as the Bill “raced” through Parliament.

Nor did the Bill’s content escape Teather’s ire. She described the landlord checks as the “most absurd” of all the Bill’s provisions. Especially interesting was her view that few clauses of the Bill were policy-directed, instead being “mostly about politics, political gain, and what works with voters.” As such, she invited MPs “to join me in the No Lobby, rather than just adding to the impression that we are all happy for a Bill as ill thought through as this to pass on to the statute book” (Hansard, 22 October 2013, col 186-188). Such an invitation represents collective action at a nascent stage. A great deal of such action begins with the attempted resource mobilisation of a single individual, which is what (according to POS) requests such as Teather’s reflects.

But perhaps most exasperating for Teather was the *party politics* of the affair, with so little opposition to the Bill, and few MPs willing to mount an organised rebellion. This speaks to our second dimension of political opportunity structures. With Labour MPs directed by their parties to adopt strategies in support of the Bill (following the direction of the party whips, whose well-defined function within parliamentary systems invokes the first, but also partly the third, of our POS dimensions), Teather could expect few allies.

Fiona Mactaggart was one exception. As one of the few MPs that made considerable efforts to oppose the Bill by vote, she sustained the theme of a Home Office doggedly pursuing its own agenda whilst disregarding the views of stakeholders. Turning to the landlord checks, Mactaggart, deploying an argument from authority – a popular tactic among Parliamentary debaters, perhaps due to the greater legitimacy carried by such views – noted that “the Residential Landlords Association – not noted for its lobbying of Parliament – has written to say that it is ‘seriously concerned that the proposal depends on untrained landlords doing the work of UK Border Agency staff without support and with the threat of penalties if they get it wrong.’” Finally, she observed that a health insurance system for immigrants was a “more popular response in the Home Office consultation than the proposed levy, yet the Home Office has rejected that idea”, adding that the reductions in appeal rights, “were not prefigured in the consultation”, thereby revealing the “arrogance” of the Home Office (Hansard, 22 October 2013, col 190).

Bill sentiment was not, of course, all negative. In fact, it received universal Conservative support. The Tory MP for Henley, John Howell, used evidence gathered by the Migration Observatory at the University of Oxford to argue in support of the landlord provisions. “If we want to look for new migrants and potentially illegal immigrants,” he said, “we need to look at the private rented sector” (Hansard, 22 October 2013, col 191). This reflects the strategy of Parliamentarians to debate in ways that draw upon appropriate evidence – as a means, in public political debates, of enhancing arguments’ legitimacy.

A second major rhetorical tactic is a focus upon the principles of democracy. This approach, which gains from democracy’s symbolic currency and emotional resonance, may be seen in the Second Reading speech made by Nicholas Soames, the Conservative MP for Mid Sussex, and grandson of Winston Churchill. Soames bolstered his position by appealing to the legitimacy inherent in wide public support (Hansard, 22 October 2013, col 196): “According to a recent opinion poll, two thirds of the public want to see drastic action to reduce immigration and three quarters of the population want to see it reduced”.

So, would the official Opposition vote against the Immigration Bill at Second Reading? With the debate at its halfway point, and Cooper still to provide an answer, Stewart Jackson, Conservative MP for Peterborough, offered his perspective (Hansard, 22 October 2013, col 199):

If they [the Labour Party] really believe that this is a bad Bill, why will they not vote against it tonight? They will not do so because they know that that would be unpopular with voters.

The criticism is forceful. It alleges that Labour prioritises political expediency at the expense of policy principle. At Second Reading, Labour offered no response to Jackson’s allegation. My interviewees – even Labour affiliates – explained why: he was right. The Labour Party had been instructed by its leadership not to formally oppose the Bill (by voting against it). To do so, they believed, would prove too electorally costly.

Notably, Jackson denied that the same incentive, electoral advantage, motivated his own party (Hansard, 22 October 2013, col 204): “This Government have taken the right decision, not particularly because they want to be electorally popular but because they have listened to people.” This argument, in invoking an MP’s responsibility to represent their constituents, makes a powerful claim to legitimacy. It is not easily

refutable. Following majority opinion is largely indistinguishable from acting in ways that are electorally popular but not motivated by populism. Multiple opinion polls do indeed suggest that more stringent immigration measures would command the support of a majority of the voting public (e.g., Duffy and Frere-Smith, 2014; Ford and Lymperopoulou, 2017).

Pete Wishart was unimpressed. “I wish I could say it is a pleasure to follow the hon. Member for Peterborough”, he said. “But I cannot.” Wishart continued (Hansard, 22 October 2013, col 204):

The Government’s stated aim with this Bill is to make the UK a more ‘hostile environment’ for illegal immigrants. I give the Minister 10 out of 10 and say to him, ‘Well done and pat yourself on the back,’ because the Government have most certainly achieved that with this Bill. They have just made the UK an even more intolerant place for the rest of us to live in.

Speaking to Schain’s thesis about the impact of right-wing political parties on immigration debate and policy (e.g., Schain, 2002, 2006; see also Bale, 2014), Wishart observed (Hansard, 22 October 2013, col 205):

We now live in UKIP UK. The party does not have one member in this House, but it is pulling all the Conservative party’s strings and dominating political debate. Everything is predicated on UKIP and Nigel Farage.

...

We do not want to take part in the appalling race to the bottom that the Conservatives are engaged in with UKIP—a race to the bottom that they can never win. They will never out-UKIP UKIP. It is the master of right-wing gimmickry. If the Conservatives enter a race with UKIP, they will only get beaten.

Interesting also was Wishart’s interpretation of Labour’s position, which corroborated that of Stewart Jackson (Hansard, 22 October 2013, col 205-206):

They do not like aspects of it [the Immigration Bill], but they are compromised. ... They are aware that immigration is a hot issue in seats that they have to win, so they are having to be very careful about what they say.

This invokes Jeanette Money's thesis (1997, 1999): that immigration is placed on the national agenda by politicians if the issue can swing enough marginal constituencies to win their party a general election, where a marginal constituency in this context is one in which a candidate's success is dependent upon their stance on immigration, specifically, their advocating restrictive policies, in accordance with the anti-immigration sentiment of constituents.

In his concluding remarks, Wishart captured well the unease of the Conservatives' coalition partners, noting that he could imagine the Liberals "sitting there thinking, 'Uh-oh! This is not a liberal bill.'" In fact, continued Wishart (Hansard, 22 October 2013, col 206), "It is one of the most illiberal Bills that we have seen from this Government. It will be an absolute disgrace if even one Liberal goes through the Aye Lobby tonight. When I sat on the Opposition Benches with them, I heard them rant against new Labour immigration bills. This bill is ten times worse than anything New Labour concocted!"

When it came to the vote, only two Liberal Democrats followed Wishart into the No lobby – out of a possible fifty-seven.

The Bill's Second Reading was brought to its close with a lengthy and detailed discussion from the Shadow Immigration Minister, Labour MP for Delyn in Wales, David Hanson. Now was the time for the Opposition to reveal its stance on the Government's immigration proposals. Labour agreed with the principles of the Bill, said Hanson, but had questions regarding how its provisions would work in practice. Nevertheless, he stated unequivocally that the "Opposition will give the Bill a Second Reading today, but we will table amendments in Committee to deal with its inequities" (Hansard, 22 October 2013, col 254).

It was then time, at 6.50pm, for the Government, via its Immigration Minister, Mark Harper, to respond to the issues raised during the entirety of the Bill's near-six-hour Second Reading debate. Harper began with a qualification. There would be no chance to discuss the issues raised thus far at Second Reading in the seven minutes that remained. However, he promised, the issues would be dealt with in detail at Committee. There was therefore little further to add except a final, ringing endorsement of the Bill (Hansard, 22 October 2013, col 257):

The Bill continues our reforms of the immigration system, and it will ensure that the public's expectations of a fair system are delivered. I commend the Bill to the House.

At 6.59pm, the House voted. The result was overwhelmingly in favour of the Bill: 303 Ayes to 18 Noes. Among the Noes were Respect leader George Galloway, the SNP's Pete Wishart, and seven Labour Members, representing a minor rebellion. Equally small was the rebellion within the governing parties: John Leech and Sarah Teather were the only members of the Liberal Democrats who exited through the No Lobby. No Conservative did. The only UK parties opposing the Bill officially were the Greens and UKIP, with the sole Green MP, Caroline Lucas, voting against the Bill. Even UKIP's leader Nigel Farage, not himself an MP, would later aver that the Bill "would lead to a society where scrutiny in daily life would threaten individual freedoms and liberties" (Harris, 2013).

The Bill's Second Reading reveals an important institutional constraint that impedes the effective scrutiny that is essential to legislation's amendment by Parliament: limited time. This is with respect to both the period allocated for deliberations, which was too short to allow the Government to respond fully to MPs' criticisms; and also with respect to the time available to develop a thorough understanding of the Bill *before* its Second Reading.

9 Commons Committee: an impotent institution?

The next Parliamentary stage was the House of Commons Public Bill Committee. Bill Committees are said to have played a fundamental role in the detailed consideration of the vast majority of legislation since 1907 (Walkland, 1979: 258, cited in Thompson, 2015b: 1), and typically comprise over 300 hours of public discussion in a Parliamentary session (Thompson, 2015b: 1).

Of all the UK's Parliamentary stages, the Public Bill Committee would appear – at least to the naïve observer – to be among the most consequential for a government's draft legislation. It is here that, in principle, bills can be modified for the first time by non-government MPs. As in Second Reading, they can also be thrown out altogether.

Research on this apparently most critical of Parliamentary stages is scarce (Thompson, 2013a: 460). In one of the few contemporary studies of Public Bill Committees, which were known before 2007 as Standing Committees, Thompson observes that a recent literature review on the policy impact of the British Parliament revealed that many authors seemed to treat the UK “as if it lacked legislative committees altogether” (Russell and Benton, 2009: 8, cited in Thompson, 2013a: 460). “Until very recently”, adds Thompson (2015b: 2), citing a work by Levy (2010), as well her own research (Thompson, 2013a, 2014), “the only comprehensive examination of bill committee work and performance was over forty years old” (namely, Griffith, 1974). It may therefore be said that the meagre amount of research on Bill Committees seems strikingly disproportionate to their potential legislative importance.

But although detailed analyses may be hard to come by, the basic facts on the institutional structure of the Commons Committee stage are more easily found. Most depictions of the UK Parliament describe Committees as consisting of usually between sixteen and twenty-five Members of Parliament (e.g., Norton, 2013: 86; Rogers and Walters, 2006: 112, both cited in Thompson, 2015b: 1-2), who reflect the party composition of the House, and conduct detailed “line by line” scrutiny of bills (Norton, 2013: 926, cited in Thompson, 2015b: 2). Moreover, Public Bill Committees have a long tradition of inviting outside parties to submit *written evidence*, to be

considered by their Members when scrutinising bills. Such evidence may come from private citizens, lobbying groups, and other interested organisations. These written submissions are published on the UK Parliament's website alongside the official report of Committee proceedings. The content and impact of written evidence as it pertains to the Immigration Bill is analysed later in this chapter.

From November 2006 (Thompson, 2014: 1-2), before their 'rebranding' and redesign the following year, Public Bill Committees have also received the presentation of *oral evidence* from ministers and external experts, in something akin to the traditional Select Committee format (Thompson, 2015b: 2). In theory, the receipt of written and oral evidence improves scrutiny by increasing the policy knowledge of MPs and bringing greater legitimacy to the process through the participation of persons representing a wide range of civil society interests. As Thompson has observed, "little assistance" is generally provided to MPs serving on Bill Committees other than through their own (two or three) research assistants. As such, they "rely on material provided by outside groups or the House of Commons Library" (Thompson, 2014: 390). Therefore, the potential for expert oral evidence to assist the scrutiny of Committee Members, and hence bring effective legislative change, may be substantial.

In the light of these few basic facts, Public Bill Committees appear to be a model democratic institution: a forum for rational critique in which a government's prospective legislation is scrutinised with evident transparency in public (and with video and transcripts provided online), by a gathering of dedicated MPs, who bring to bear a wide range of relevant experience and expertise in their line-by-line scrutiny. *Prima facie*, one duty of these MPs is to represent their electors' interests, bringing to light pertinent constituent cases. Additionally, any Member of a Committee may participate directly in the changing of policy by *tabling amendments*: proposed deletions, modifications, or additions to a bill that can, if the MP chooses, be pressed to a vote. If a majority of the Committee votes in support of an amendment, it then becomes part of the bill under discussion, ostensibly bringing real and meaningful change to prospective legislation.

Notably, the selection of outside experts to provide their evidence is decided by the Government *after consultation with the Opposition*. In theory, this should lead to a fairer balance of testimony than if the selections were made by the Government alone. Even so, the Government takes the lead in deciding whom to invite, and also has the *final say* over the appointments.

Thus, at first glance, the overall picture of the Public Bill Committee may be said to accord well with democratic ideals. However, on closer inspection this neat and rosy picture becomes more complicated – and more negative.

None of my interviewees described the Bill Committee as an effective check on executive decision-making. Indeed, quite the opposite. As Thompson notes (2015b: 10):

Contemporary literature and comment on bill committees by journalists and parliamentarians implies that they are powerless and ineffective bodies, staffed by unwilling generalists who would, it seems, prefer to be writing their Christmas cards..., reading newspapers...and even playing Sudoku...than engaging in the detailed scrutiny of legislation.

Moreover, as Thompson records (2015b: 7), in recent years Bill Committees have been described as a “sham” (Abbott, 2011), and as being of largely “ritualistic” significance (D’Arcy, 2013). From this contrasting viewpoint, Public Bill Committees are less a transparent domain of informed deliberation and accountability – hence a paragon of democracy and serious check on executive power – than one of indolence, ignorance, irresponsibility, and ultimately, irrelevance. Such a highly critical account finds a degree of corroboration in the academic literature, especially on the central question of the ability of Public Bill Committees to limit executive strength by correcting the excesses of government legislation. In this regard, in one notable analysis of Parliament by Crick, Bill Committees are presented as having “little real chance of influencing legislation” (Crick, 1970: 8, cited in Thompson, 2015b: 7).

Is Crick’s view correct? Answering this question is the principal objective of this chapter. We begin through a consideration of the fourth dimension of our POS framework: public political discourse.

The Commons Immigration Bill Committee: the debates

The Immigration Bill Committee sat eleven times for a total of twenty-two hours and twenty-three minutes. The Committee comprised twenty-five members: two chairs, two clerks, and twenty-one MPs (who I refer to as Members). Of the MPs, two were

Government ministers, the Immigration Minister Mark Harper, and the Liberal Democrat Minister for Crime Prevention, Norman Baker.

The party breakdown of the twenty-one MPs is as follows: Conservatives: ten; Labour or Lab/Co-op: eight; Liberal Democrats: two; Democratic Unionist Party: one. Seldom did all members of the Committee attend each session. In the first sitting, four were absent.

The first three sittings of the committee were dedicated to hearing oral evidence from seventeen external actors, most representing special interest groups. In the fourth sitting, the committee heard evidence from the Home Office, provided by Harper. Evidence sessions are strictly timetabled by the Programming Sub-committee, a timetable which must be agreed upon by all Committee Members. It is important to note that expert witnesses were not told beforehand what questions they would be asked. This contrasts with the other debates in Parliament, where Parliamentarians often informed the Government what questions they would ask, in a spirit of co-operation, and to allow the Government to better answer their queries.

In this qualitative analysis of the Committee stage, I shall focus especially on the arguments presented by expert witnesses, as these represent some of the strongest and best-informed arguments in all of the Parliamentary debates on the Bill.

Sittings 1-4: the expert oral evidence

On 29 October 2013, the Committee heard evidence from six witnesses: four medical professionals and two members of MigrationWatch UK. The first medical professionals to give evidence, at 9.03am, were Professor J. Meirion Thomas, a Senior Surgeon and Professor of Surgical Oncology at The Royal Marsden, a specialist cancer treatment hospital; and Jacqueline Bishop, from the Brighton and Sussex University Hospitals Trust and Co-Chair of the Overseas Visitors Advisory Group of the NHS, a body that advises the NHS and government on recouping medical costs from foreign users of the NHS.

Thomas became a public figure – and one of some notoriety within the health sector – for authoring four articles on health tourism in the *Spectator* from February to August 2013. A person obviously dedicated to the NHS, Thomas was shocked to learn of the scale of its abuse by so-called “health tourists”: a problem on which he had conducted years of personal research, including speaking with immigration officials and colleagues. His first article, “The next NHS scandal: We heal the world

– and you pay for it”, highlighted the loopholes by which non-British individuals could access costly NHS care to which they were not entitled, and crucially, for which they did not pay.

Labour MP Helen Jones began the questioning, trying to elicit facts about “health tourism”, the Government’s main reason for the immigration health charge (Hansard, 29 October 2013, col 8):

What evidence can you provide us about the numbers of people who come here deliberately to use the National Health Service as opposed to those who come here and find themselves ill, but who have not made proper provision?

“We have no idea how many such people there are”, said Thomas, adding that a recent report conducted by Creative Research in 2013, which suggested that the cost of visitor and migrant use of the NHS was £2bn, “does not take us anywhere near the total amount”, because the report did not include in its sample “problem hospitals” targeted specifically by health tourists (Hansard, 29 October 2013, col 8).

Harper asked if the witnesses supported the Bill’s proposal to amend the “ordinary residence test” so that a person will receive NHS care free only if they are a permanent resident of the United Kingdom. “The definition of OR has been the biggest loophole of all,” said Thomas, “so yes is the answer.” Bishop concurred (Hansard, 29 October 2013, col 11).

At 9.45am, Thomas and Bishop were replaced by three new witnesses: Professor Vivienne Nathanson (interviewed for this research), director of professional activities at the British Medical Association, the largest trade union and professional body for doctors and medical students in the UK, with over 170,000 members; Clare Gerada, chairman of the Royal College of GPs; and Terence Stephenson, chairman of the Academy of Royal Colleges. Helen Jones again began the questioning, asking whether the new residence criterion to grant free NHS treatment would help “identify people who should not be accessing the NHS for free”. The difficulty, said Nathanson, was whether eligible individuals would be able to prove their permanent residence (Hansard, 29 October 2013, col 17).

When asked whether the proposed health charge would deter health tourists, Professor Stephenson replied: “A flat levy is clearly a nonsense; £200 would not pay diddly-squat for one consultation; a single inhaler for asthma costs £55 without you even seeing a doctor to examine you and make the diagnosis.” Gerada agreed, adding that a levy “opens the floodgates for anybody who wants to come and have free health

care, because you are saying that if you pay £200 or £250, you can get what you like” (Hansard, 29 October 2013, col 20). The implication of these criticisms was clear: this part of the Bill would have to be deleted.

Next to give evidence were two members of MigrationWatch UK: the group’s Chairman, Sir Andrew Green, and Matthew Pollard, its Director. MigrationWatch is a prominent player in the field and makes frequent public interventions: in newspapers, on the television, and through a steady flow of content onto its website, which includes research reports. Interviewees also suggested that Green has the ear of senior figures in the Conservative Party, including David Cameron. So MigrationWatch’s presence at the evidence sessions – a presence which both conveys and confers authority in the field – was perhaps telling.

The Shadow Immigration Minister, David Hanson, asked the first question, which aimed to glean the magnitude of the central problem that the Bill was said to tackle: illegal immigration. “I am grateful for your written evidence, which I looked at this morning”, said Hanson. “You indicate in it that you estimate that the number of illegal immigrants...is 1 million now. Can you give the Committee the basis on which you have made that estimate?”

The basis, said Green, were the two major attempts at an estimate: a study in 2005, which made a “central estimate of 430,000”, and a 2009 report by the London School of Economics on behalf of the Mayor of London, which made a “central estimate of 618,000”. Green added that after considering some other data and making some “adjustments”, “we then came to the figure of 1.1 million”, which, while based on a “lot of intelligent guesswork”, was nevertheless a “cautious estimate” (Hansard, 29 October 2013, col 34). When asked whether the Bill would help reduce the number, Green suggested that the Bill was addressing the issue in the only way possible: “to try to make it more difficult for people to stay in the UK illegally” (Hansard, 29 October 2013, col 35). Yet with regard to health tourism, Green said that he did not think the Bill “is going to do very much that is helpful” (Hansard, 29 October 2013, col 37).

At the second of eleven sittings of the Immigration Bill Committee, which took place later that day, the Committee received evidence from seven witnesses representing landlords, lettings agents, the homeless, universities, and immigration lawyers. The committee heard first from three witnesses with a special interest in the landlord

immigration checks: Carolyn Uphill, Chairman of the National Landlords Association; Richard Jones, Policy Director of the Residential Landlords Association (interviewed for this research); and Caroline Kenny, from the UK Association of Letting Agents (UKALA).

Hanson asked the first question, noting that the witnesses' written submissions gave him "the impression that you object to the clauses in the Bill in principle". Uphill, representing landlords, agreed, highlighting the "administrative burden on landlords who are not experts in immigration" and the "periodic checks" that landlords would be expected to carry out to ensure the tenant still has immigration permission. To which Jones, representing landlords, added: "we think that the Bill and its provisions are not workable and will not be effective in achieving the objectives set out." Kenny, representing letting agents, was less critical, saying that UKALA had "generally welcomed the Bill", though it shared the concerns over the proposed requirement for landlords to check tenants' migration status periodically (Hansard, 29 October 2013, col 43-44).

When the witnesses were asked about the potential negative consequences of the provisions for "indigenous individuals", Kenny noted "major concern" over the "impact on ethnic minorities, irrespective of their immigration status", while Uphill explained that while landlords' properties are empty, "they are running up overheads, so the landlord is going to be tempted to take the easiest option." For Jones, there was a more general problem: "Having to produce original paperwork and copy and retain it will inevitably impact on British citizens as well" (Hansard, 29 October 2013, col 46-47). Worse, the UK's 600,000 private landlords would be "bewildered by the complexity" of the bureaucracy that implementation of this provision would require, given that there were at that time, said Jones, 444 European Economic Area documents that prove immigration status (Hansard, 29 October 2013, col 49).

On the telephone service that the Home Office planned to provide to landlords to provide them instruction on whether or not to let to a particular tenant, Uphill expressed concern that the pledged 48-hour turnaround time would be too long. "In many, many cases", said Uphill, "the property will be gone by then" (Hansard, 29 October 2013, col 49).

But Uphill had a greater worry: that the proposal would feed the "rogue operator sector": "if you make it less attractive and more of a risk for a landlord to take on someone who has only a temporary right to stay in the country, those people will be forced into using that underclass of operators" (Hansard, 29 October 2013, col 50).

After thanking these witnesses for their wisdom and experience, the Chair took evidence at 2.58pm from Katharine Sacks-Jones (whom I interviewed), the Head of Policy and Campaigns at Crisis, a national UK charity for single homeless people. Crisis's concern, said Sacks-Jones, was that the Bill would make it more difficult for homeless people to access private accommodation, including people "who are either British citizens or who have a right to reside here, but who might struggle to have the necessary documents to prove that." Although the Bill contained exemptions from the landlord checks for social housing, hostels, mobile homes, student halls of residence, and properties with long leases, Sacks-Jones noted, "not all accommodation used to house homeless people will be exempt" (Hansard, 29 October 2013, col 60). But when asked by Hanson whether Crisis would prefer to see the landlord provisions deleted from the Bill, Sacks was cautious. She said that Crisis had "concerns overall around the Bill", but affirmed that, "there are steps that can be taken and amendments brought" that would improve its provisions (Hansard, 29 October 2013, col 61). Many lobbying groups prefer such an approach. Be too critical, said one lobbyist interviewed, and the Government "digs its heels in". Be more positive, and they are more likely to make concessions.

Next up, at 3.18pm, were two witnesses from Universities UK, an advocacy organisation for universities in the United Kingdom with 133 individual members, each an executive head (vice-chancellor/principal) of a UK university. The university lobby, interviewees related, is particularly powerful, both within and beyond Parliament, with special power in the Lords where its members are often chancellors or vice-chancellors of UK universities. The Committee heard evidence from the Chair of Universities UK, Colin Riordan, and the group's Policy Adviser, Jo Attwooll.

Their main concern was the *deterrent* effect of the Bill upon students and staff, especially of the landlord checks and health charge. The landlord checks, said Riordan, would "create a whole set of problems that we feel are unnecessary and will seriously disadvantage us". The potential negative effect of the "moderate" health charge was not considered great of itself, but was worried to contribute to a "cumulative impact" of disincentives for international students when added to the tightening of the immigration system in 2010 (Hansard, 29 October 2013, col 71). Jo Attwooll supported this idea with reference to a survey by i-graduate, which showed that between 2008 and 2009, "the perception of the UK as a very attractive destination for international students went down by, I think, eight percentage points" – while Canada's rose by fifteen per cent.

At 3.46pm, the Committee welcomed the barrister Adrian Berry, chair of the Immigration Law Practitioners' Association. Berry is described by *The Legal 500 United Kingdom*, a guide on UK law firms and practitioners, as "the best of any barrister at EU and nationality law" (Garden Court Chambers, 2015). The strategy of ILPA differs from that of other lobbying groups. It is forceful and plain in its criticism and evidences no attempt to conciliate the Government by a gentle tone or by balancing criticism with praise. Its Second Reading briefing on the Bill was entirely negative in its critique. Because ILPA's evidence is especially well-informed, it is worth considering Berry's oral evidence in some detail.

Berry began by providing an assessment of the current standard of decision making in the Home Office for immigration applications – which the Bill sought to limit appeals against. The Bill's reduction of appeal rights concerned "managed migration routes", said Berry, "which are the people who come in for work, for study and for family reunion purposes." Decision making in this area, said Berry, "is extremely poor, as the appeals impact assessment notes": "Some fifty per cent of managed migration appeals are allowed on points of administrative law, and do not engage human rights or the refugee convention". The result of a lack of a judicial remedy against bad decision-making would be that applicants would "either try for a very expensive, privately funded judicial review", said Berry, "or they will not bother coming to the UK" (Hansard, 29 October 2013, col 74).

Original decision making could be improved, suggested Berry, not through legislation, but by better administration: investing more resources in training as well as a "broader approach to acceptable evidence, with less rigidity and more flexibility". "Ultimately", Berry said, "there is no substitute for the judge on your shoulder" – the decision-maker's appreciation that wrong decisions are subject to a judicial remedy. "We have already trailed administrative review with the points-based system before," said Berry, "and it is no substitute for the rule of law, where you have independent judicial scrutiny of executive action" (Hansard, 29 October 2013, col 75).

In his response, Harper noted that for overseas immigration applications, which use the system of administrative review, the Bill's proposed replacement for domestic appeals, twenty-one per cent of initial decisions are overturned after administrative review. "Why would we not be able to implement that sort of system here?" The exchange continued (Hansard, 29 October 2013, col 75):

Berry ...If twenty-one per cent of decisions are overturned through administrative review, but fifty per cent of economic managed migration appeals are allowed, you can see the difference that independent and impartial judicial scrutiny makes.

Harper ...If we look at the ... response to the removal of the family visit visa, which was effective from 25 June, in the first three months, we have seen only three judicial reviews from people for whom we refused a family visit visa. Does that not suggest that the processes we have put in place for administrative review are successful and will not force people to follow the expensive judicial review avenues that you suggested?

No, said Berry. The low incidence of judicial review resulted from cuts to legal aid. “As you will be aware,” Berry continued (Hansard, 29 October 2013, col 76):

...judicial review is a procedural remedy, which looks at the way in which a decision is taken and not at the substantive outcome. The difference with an appeal on facts and law is that one is able to adduce evidence that allows the decision to be substantively overturned, rather than be a running commentary on the way in which the decision is taken.

Berry’s point is an important one. Judicial review aims at reducing governments’ past abuses of power by improving decision making *processes*. It is not concerned with providing substantive remedies, such as granting entrance to the UK or leave to remain.

In his final remarks, when asked whether appeal rights should be reduced at all, Berry said that they should not. He noted that illegal migrants could still appeal on human rights grounds, but that “the ordinary Joes, who play by the rules and seek leave to enter or remain” would have their rights to appeal against wrong decisions taken away. “I fail to see how that deals with the problem of illegal entrants or overstayers”, said Berry, adding: “You have hit the wrong target, frankly” (Hansard, 29 October 2013, col 82). With that, the second evidence session of the Commons Committee drew to a close.

The Committee sat to hear expert evidence for a third time on Thursday 31 October, at 11.30am. It heard oral evidence from three witnesses: Angela Patrick, Director of Human Rights Policy at Justice, a lobbying group that campaigns for human rights; Rachel Robinson (whom I interviewed), Policy Officer at Liberty; and Saira Grant (pronounced Sarah), Legal and Policy Director at the Joint Council for the Welfare of Immigrants, an independent national charity that provides legal assistance to immigrants, and campaigns for a human-rights-based approach to the formulation of immigration law.

Patrick opened the discussion, expressing concern about “a number of areas”, especially on the Bill’s provision concerning the interpretation of Article 8. “We do not think that Parliament needs to do what it is proposing to do, and we think that the courts consider many of the factors that are included in clause 14 already” (Hansard, 31 October 2013, col 87). Robinson was stronger in her criticism, saying that it amounted to the imposition of a “judicial straitjacket” (Hansard, 31 October 2013, col 102).

On residential tenancies, Robinson noted that the Bill would bring immigration control “into our communities”, with private citizens doing the job of immigration officials, producing the potential for discrimination where they think tenants are less likely to be British. “We should not underestimate the kind of tensions that would create in our communities”, said Robinson (Hansard, 31 October 2013, col 97).

The last expert witness to give evidence was Saira Grant from the JCWI. Hanson addressed his first question to the ‘deport first, appeal later’ provision, which would prescribe that migrants appealing deportation decisions could do so only from abroad after being deported for having received in the UK a prison sentence of 12 months or more. “Not allowing people the chance to have their appeal heard here”, said Grant, “goes against fundamental principles of the rule of law in this country” (Hansard, 31 October 2013, col 103).

Could Grant make any suggestions that might assist the Committee in tabling amendments to improve the fairness of the landlord provisions, asked Hanson. “I struggle to provide you with what you want because I so fundamentally oppose what is being attempted in this area,” replied Grant. “With both the landlord and NHS provisions, the Government are not achieving what they seek to achieve or what they have stated that they want to achieve.” By way of explanation, Grant stated that the NHS provisions would have “no bearing” upon those unlawfully accessing NHS services, but would effectively mean that long-term migrants would pay twice for their

NHS care, once through their taxes and national insurance, and a second time through the immigration health charge. Moreover, said Grant, the levy would stand to earn the Government £200 million a year, just “0.18 per cent” of the NHS’s “£109 billion a year” budget (Hansard, 31 October 2013, col 104).

In the Committee’s fourth sitting, later that day, the Immigration Minister Mark Harper gave evidence, and responded to questions about the Bill. Most queries were put by the Shadow Immigration Minister, David Hanson. Hanson has a gentle and easy manner, and began by reassuring Harper that he would “not engage in political debate” (Hansard, 31 October 2013, col 111), but ask questions that would aid Labour in tabling amendments. In developing his scrutiny, Hanson was briefed not only by Labour advisors but also the aforementioned external groups. Importantly, Hanson informed Harper beforehand of what questions he would ask.

On reducing appeal rights, Harper assured the Committee that UK Visas and Administration was, “putting great effort into improving the quality of original decision making” – given that over fifty per cent of appeals are upheld. “It is worth putting the numbers in context”, added Harper, noting that only thirteen per cent of managed migration applications were not granted, and of these, not all those with a right of appeal chose to use it (Hansard, 31 October 2013, col 111-112). The fifty per cent figure is a share of the less than thirteen per cent of all applications that were refused, meaning that less than 6.5 per cent of all decisions could be said to have been demonstrably wrong.

On the landlord provisions, Hanson asked whether the Government would “pilot” the scheme before full implementation. Harper promised that there would be a “phased roll-out”. “Can you explain what the difference is between a pilot and a roll-out”, asked Labour MP John Robertson. “With the phased roll-out”, said Harper, “we are making it clear that we want to proceed...it is sensible to roll it out first in one or more parts of the United Kingdom. We can then learn from that experience. Some practical implementation issues might arise, but we can then deal with those before we roll the policy out across the rest of the country” (Hansard, 31 October 2013, col 116).

The written evidence

In addition to the taking of oral evidence, the Committee also took written evidence as a means of enhancing its Members' scrutiny. As noted by Thompson (2014: 387), the introduction of extensive evidence taking powers was intended to "hone [the] scrutinising edge" of Bill Committees (Modernisation Select Committee, 2006). The receipt of written evidence is important because it provides a further opportunity for interest groups and private citizens to communicate with Parliamentarians and government in Committee.

The Government invited the submission of written evidence to be considered in Committee via a webpage on the UK Parliament website, created 23 October 2013, after the Immigration Bill's Second Reading. The invitation read as follows:

Do you have relevant expertise and experience or a special interest in the Government's Immigration Bill?

If so, you can submit your views in writing to the House of Commons Public Bill Committee which is going to consider the Bill.

...

The written evidence will be circulated to all Committee Members to inform their consideration of the Bill.

All submissions were circulated to all of the Committee's Members to inform their consideration of the Bill. The evidence does not reflect all outside opinion considered by Parliament. It does not include opinion on the deprivation of citizenship clause added at Commons Report, for example. Nor does it include briefings submitted by lobbying groups to Parliamentarians. But it does provide a good sample of external opinion.

Sixty-five items of written evidence were submitted for the Committee's consideration. However, thirty of these appear to have been received after the final sitting. Of the thirty-five items of written evidence submitted in time to be considered by the Committee, most came from external interest groups. Five were from individual private citizens.

I analysed the content of these thirty-five pieces of written evidence. I coded every comment regarding the Bill's provisions into one of three categories, depending on whether they indicated *support*, *opposition*, or *other*, which included neutral

comments and comments that contained both support and opposition. I then calculated for each article a ‘balance of criticism’ score, where 1 indicates that all comments were negative (i.e., criticised or indicated opposition to the Bill or its aspects); and 0 indicates that all comments were positive. A score of 0.5 indicates equal numbers of comments that praised and criticised the Bill or its aspects.

Only one submission was solely positive in its critical content, that of MigrationWatch UK.

Three submissions provided *no critical comment* (i.e., positive or negative evaluations) on the Bill’s content. One of these was from the Residential Landlords Association and sought to correct an error of fact in the oral evidence of its Chairman, Richard Jones. The second was a statement signed by thirty-three London doctors which questioned remarks made by expert witness Professor J. Meirion Thomas, who had suggested that health tourism was so common that doctors at the Guy’s and St Thomas’ hospital had a special label, the “Lagos shuttle”, because so many women from Lagos had arrived heavily pregnant in the UK to give birth under NHS care. Finally, the written submission of Universities UK provided information relevant to consideration of the Bill’s landlord and health charge provisions as they related to students. It provided data on UK student accommodation, the average comparative cost of study abroad for international students, and UK student visa requirements compared with those of competitors – but no critical comment.

Two submissions contained a mixture of positive and negative critical comment. The first, from Shout Out UK – an independent news network and course provider that aims to get young people more active in politics – provided five comments indicating approval, and one negative comment, giving a balance of criticism score of 0.17. The second submission providing a mixed critique was from TUI UK & Ireland, a leisure travel group. Whilst providing wholly negative comment on the Bill’s proposal to introduce embarkation checks, they indicated at the start of their submission support for “the vast majority of the proposals outlined and believe they will assist the UK Border Force to control immigration more effectively and improve removal processes”.

Two submissions, from Crisis and the Academy of Medical Royal Colleges, I excluded from the analysis because they did not fit my framework. Their critical comment was so nuanced, with negative evaluations prefaced by positive ones, that I felt I would be doing them a disservice to fit them into my analytical scheme.

The remaining twenty-seven submissions of written evidence were wholly negative in their criticism.

Notably, Bail for Immigration Detainees provided four amendments in their written submission. This evidence provided four written amendments for MPs: Amendments 39, 18, 32 and 33, the first two of which were tabled in Committee Meeting 6, with the latter two tabled in the Committee's fifth and sixth sittings. Moreover, two submissions from ILPA provided amendments and questions for MPs to put to the Immigration Minister.

Finally, how many of these written submissions appear to have been drawn upon or referenced in the Committee debates (other than when their authors gave oral evidence)? Just twelve.

Sittings 5-11

In the remaining seven sittings of the House of Commons Public Bill Committee, all major provisions of the Bill were discussed, sometimes in fine detail that focused upon the meaning of single words. To give our analysis greater focus, we will not here recount the arguments which were presented for and against each of the Bill's main provisions. Many of these have already been presented. Instead, we will focus upon the Committee's apparent capacity to change the proposals of the executive.

To the naïve investigator, the final seven sittings of the Committee present two major puzzles. The first arises from the contrast they provide with the previous four expert evidence sessions. In those, the majority of the Bill's major clauses were criticised from most actors, often in strong terms. Yet in the final seven sittings, minor amendments were debated as if no serious criticisms had previously been registered.

Tellingly, not one of the forty-five amendments tabled by non-executive Parliamentarians and which were discussed and moved⁴⁷ – many of which were

⁴⁷ Sometimes the Opposition did not propose an addition to the Bill, nor a minor deletion of a part of it – these modifications being known as “amendments” – but proposed instead that an *entire clause* or *Schedule of the Bill be removed*. In the Parliamentary convention, such a proposal is labelled “opposition to the Question that the clause or Schedule *stand part of the bill*”. For simplicity, I treat such proposals as “amendments” even though that is not the conventional term. Consequently, in instances where deletions of entire clauses or Schedules are proposed by the Opposition, because there is technically no amendment, there is no amendment to “withdraw”. By convention, if the proponent of a deletion of a clause or Schedule is satisfied with the Government's oral response to their proposal, they will abandon the proposal and the relevant clause or Schedule will be “ordered to stand part of the Bill” (i.e., will remain as part of the Bill). In this analysis, I treat the lack of a willingness to put such a proposal to Committee vote as a withdrawal. This is reasonable

drafted by Alison Harvey at ILPA, and other external lobbying groups such as Bail for Immigration Detainees – was passed. This is less remarkable when one considers the striking fact that only four non-Government amendments, or ten per cent, were actually put to a vote. The remaining forty-one were withdrawn, sometimes without any debate at all. What explains this second puzzle: the seemingly bizarre behaviour of MPs tabling amendments, then withdrawing them, apparently of their own volition, as if they had no intention to change the Bill in the first place? (The outcome of amendments is summarised by Table F.)

as its effect is identical to the formal withdrawal of an amendment, and will allow my statistical analysis to provide a fuller and more accurate picture of the character of Opposition action.

Table F Commons Committee amendment outcomes, by sponsor

Sitting	No. of non-Gov. amendments ^{1 2}	Outcome of non-Gov. amendments	No. of Gov. amendments	Outcome of Gov. amendments
5	8	8 withdrawn	0	-
6	8	7 withdrawn, 1 rejected on vote: Ayes 6, Noes 9	9	9 accepted without vote
7	2	1 withdrawn, 1 rejected on vote: Ayes 8, Noes 12	0	-
8	10	10 withdrawn	3	3 accepted without vote
9	8	8 withdrawn	38 (35 [amendments 61-95] + 3 others)	38 accepted without vote
10	3	1 withdrawn; 2 rejected on vote: Ayes 8, Noes 9; Ayes 7, Noes 10	4	4 accepted without vote
11	6	6 withdrawn	0	-
TOTAL	45	41 withdrawn; 4 rejected after vote	54	54 agreed to

¹ Amendments included are those discussed or moved. Tabled amendments not discussed or moved are not included.

² Included as *non-Government* amendments are amendments tabled by MPs of the ruling parties if such MPs are not members of the Government, i.e., are not the prime minister, ministers (i.e., cabinet ministers), or junior ministers. The count includes not only amendments that are moved but those which are discussed but not formally moved (following Thompson, 2014, 2015).

The answer to these puzzles is that the Immigration Bill's Committee stage, like all Public Bill Committees, was "a bit of a charade", to use the words of one interviewee. The main reason for this is simple institutional design – reinforcing the importance of the two dimensions of my POS approach derived from neo-institutionalism. The Committee of Selection, which nominates Members to serve on the Committee, must "have regard...to the composition of the House". This apparently modest and somewhat obscure instruction, is in fact profound in its consequences for the legislative influence of the Committee. It means that the composition of Commons Committees, with respect to the party affiliations of its Members, should be roughly

proportional to that found in the House of Commons. In practice, this directive is adhered to closely, as is made clear by Figure 8, which shows the proportion of MPs of each party in both the House of Commons and the Immigration Bill Committee.

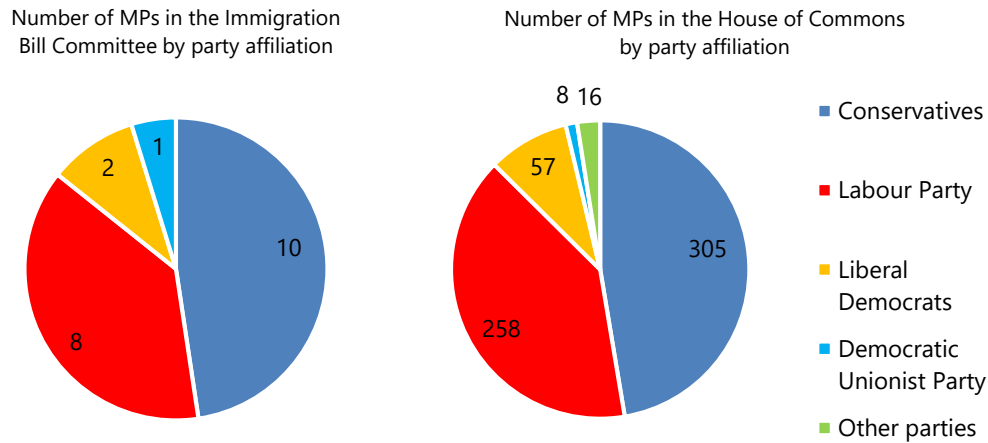


Figure 8 The number of MPs in the Immigration Bill Committee and in the House of Commons, as of 19 November 2013: a pie chart comparison

The important logical consequence of this is that in Public Bill Committees, as in debates of the whole House, such as at Second Reading, *there is always a Government majority*. This derives from the design of the Westminster system, where the ruling party or parties usually have an absolute majority in Parliament. Without this majority, passing legislation would be that much more difficult, as their business would be under constant threat of being amended or thrown out by an opposing majority vote. Thus, as long as MPs of the ruling party or parties remain united in Committee, they can outvote the Opposition on any amendment put to a vote.

For the Immigration Bill Committee, the Coalition stayed united, successfully voting against all non-Government amendments – as governments almost always do in Public Bill Committees. Indeed, in her sample of 139 Bill Committees in which were tabled 17,123 non-government amendments, Thompson showed that just eighty-eight were successful: a small fraction of 0.5 per cent (2015b: 8). Moreover, sixty-four of these (seventy-three per cent) entailed only minor changes to the wording of a bill (see Thompson, 2013: 468). One interviewee spoke to this pattern plainly: “the Opposition cannot win in Committee.”

This raises the question of how parties maintain discipline. Because even with a majority at Committee, the Government can lose on an amendment vote if its members do not vote unanimously. Yet members of the Coalition tended to vote as one. Why? Interviewees suggested the strength of Commons whips is partly responsible, allied to a particular attitude among MPs: that showing loyalty to their party and its leadership, through support of their policies, brings professional benefits, such as advancement within their party. Rebellion entails the inverse cost: barriers to intra-party career progression.

This is reflected in the number of non-Government amendments tabled by Conservative Party Members. Reinforcing the view that the role of ruling-party MPs is to provide loyal support for, rather than serious scrutiny of, bills, only eleven out of all 109 amendments tabled at Committee were from Coalition MPs seeking to change the Bill. Ten of these were from Liberal Democrat Julian Huppert. The only amendment tabled by a Conservative was from Nigel Mills, which sought to extend the movement restrictions on Romanian and Bulgarian immigrants.

Consequently, it is rare for amendments contrary to a government's wishes to be successful. Even if they are put to a vote, the 'tyranny of the government majority', to modify a phrase made famous by Tocqueville, prevents them from being accepted. Loyal MPs will defend their party's legislation regardless of the merit of opposing arguments. As such, barring any unexpected rebellions, amendments pushed to a vote can almost always be expected to be "negatived on division" (rejected by vote). Such was the case with the Immigration Bill in the Commons.

It is therefore a simple fact of institutional design – that the Commons Public Bill Committee must reflect the strength of the parties in Parliament – allied to the incentive structure that operates within parties, which explains why at the Immigration Bill's Committee amendments of the Government, totalling fifty-four and mostly of a minor and technical nature, were all agreed to without opposition (being not even put to a vote), while non-Government amendments were seldom put to a vote at all, and were all rejected when they were. Requesting a vote on amendments that oppose the executive's proposals is widely, and reasonably, considered to be a waste of time.

Apart from professional self-interest, there is another reason for Members' unwillingness to push amendments to division: they may favour a less adversarial, more co-operative approach to scrutiny, in the belief that this is more likely to encourage a minister to move on an issue before the Report stage (Thompson, 2013: 475). It is plausible that the increased popularity of this method has contributed to

the decrease in the mean number of amendments pushed to division in Bill Committees over recent years: from 9.6 per bill in the period from 1967 to 1971, to 7.3 from 2000 to 2010 (Griffith, 1974: 260-266; Thompson, 2013: 476). Note that the number of amendment divisions in the Committee for the Immigration Bill was remarkably lower than the average for the first decade of the millennium – a result, suggested interviewees, of the knowledge that the Government would not move on the issue.

We can now answer concisely the first and second puzzles identified at the start of this section. The Bill Committee is not, like Second Reading, a place for broad arguments of principle or strongly-worded criticism. That is not the way to win the sympathy of ministers. It is not the way to win concessions. Nor is testing the opinion of the Committee amendments near-certain to be rejected, given that the Government outnumbers the Opposition, and tend to be averse to all amendments that seek to change its legislation.

An additional aspect of this disparity in power is evidenced by the Committee's sixth sitting. Here, Harper tabled nine amendments to expand the Government's powers within clause 12 of the Bill, such that the Government would be able to deport not only "foreign criminals" appealing to stay in the UK on human rights grounds (as was currently proposed by the Bill), but also others whose deportation is deemed by the Home Secretary to be "conducive to the public good". Harper downplayed the significance of these amendments, describing the power as entailing only a "slightly broader judgement" than that already present in the Bill (Hansard, 5 November 2013, col 205). In response, Hanson, while noting that, "the Opposition do not oppose clause 12 and will not divide the Committee on it" (an apparent indulgence of the committee "charade"; doing so would be pointless), resolved to "test the Minister slightly more on his amendments" (Hansard, 5 November 2013, col 207). His justification was telling: Harper had tabled these amendments "very late in the day." "He knows", Hanson continued, "that the Bill has not had pre-legislative scrutiny and that it effectively received an unopposed Second Reading...yet he is tabling major amendments that change quite significantly the nature of the provisions in clause 12" (Hansard, 5 November 2013, col 207). The tabling of amendments at this stage, which the Government is entirely within its power to do, makes their adequate scrutiny difficult if not impossible.

The Commons Committee: an initiator of change?

By thus far focusing upon the *direct* legislative impact of non-Government Parliamentarians, via the success of their amendments, we have made, in the view of Thompson, an error of imagination. She argues that to discern the true function and impact of the Public Bill Committee, we must depart from a focus upon the stage's "formal outputs", namely, the acceptance of non-Government amendments, by vote or otherwise, and instead pay more attention to the Committee's influence upon the "remainder of the legislative process". Thompson has two types of influence in mind (2015b: 8). The first is where the Government, in response to arguments made at Committee, makes changes to the *regulations* or *guidance* accompanying a bill. For Thompson, although such changes do not change the text of the bill itself, they can nevertheless "be crucial for the implementation of a policy" (2015b: 8). The second way in which non-executive activity at Committee can change bills is if the Government tables amendments at Committee or Report in response to issues raised by Opposition and backbench MPs during the Committee stage.

An analysis sensitive to these *indirect* forms of influence suggests that the Bill's Commons Committee did indeed produce some significant 'knock-on' effects. These are analysed in Chapter 12, which shows that eight out of the ten main changes brought to the Bill during its passage through Parliament, and which resulted from Parliamentary pressure rather than at the sole initiative of the executive, resumed critical debates raised at Commons Committee.

Commons Committee: a 'runny' institution?

In this chapter, I subjected the House of Commons Committee stage to a qualitative analysis. I presented a number of manifest puzzles in Bill Committee practice, noting that its institutional design ensures that the Official Opposition "cannot win". This explains the polarisation in amendment outcomes: why all non-Government amendments failed, and all Government amendments succeeded.

The central fact says a lot: the Immigration Bill left the committee modified only by the Government that introduced it. This in spite of the expert witnesses criticising it in strong terms. However, in broadening our view beyond the "formal indicators" of Committee impact, beyond the acceptance by vote of non-Government and backbench amendments, we can appreciate the true political meaning of the

Committee stage. Its impacts were evidenced at later Parliamentary stages, including in the Lords.

The resulting picture is of a Parliamentary stage whose apparently numerous and meaningful democratic features – the possibility for extensive participation from external actors, the receipt of expert oral and written evidence to provide to MPs the information required for effective scrutiny, extensive line-by-line deliberation of the Bill, allowing for Government accountability in a substantially transparent process – yield limited legislative impact.

If the effectiveness of a Bill Committee is determined principally by its ‘viscosity’, a political science buzzword meaning the capacity for a political institution to check the power of another, which here translates as the ability of the legislative in the form of the Parliamentary Committee to constrain the Government in its passage of legislation, then this stage may be characterised as in general offering little resistance. It is a ‘runny’ institution, no serious check on executive power.

10 Commons Report

In the weeks preceding the next Parliamentary stage in the House of Commons, Report, newspapers revealed the stirrings of a Conservative backbench rebellion to extend controls on Romanian and Bulgarian migration due to expire on 1 January 2014. The rebellion was led by Conservative backbencher Nigel Mills. On 19 November, the *Daily Mail* reported that backbench support was “coalescing” around Mills’s plan, with “dozens” of Tory MPs likely to back the measure, thereby, in the words of the *Mail*, putting “huge pressure on the Prime Minister to defy the European Union over its cherished free movement rules.” (Doyle, 2013). By 4 December, Mills had tabled an amendment with the support of sixty-two MPs to extend restrictions on Romanian and Bulgarian migrants until 31 December 2018. The MPs comprised mainly backbench Conservatives from the right of the party, including those without a reputation for being “serial rebels” (Ross, 2013b).

The campaign won ministerial support. Kris Hopkins, the housing and local government minister, was reported to say that it was MPs’ “democratic right” to demand the Government defy the EU, before adding that he did not disagree with the MPs’ position (Ross, 2013b). The support of Hopkins was significant. Ministers have more political heft than backbenchers by virtue of their office. Their ministerial status is also thought both partly to *reflect*, but also to *require*, stronger party loyalty than the average backbencher. Indeed, any ministers or ministerial aides voting for a rebel amendment would be expected, revealed *The Sunday Telegraph*, to resign (Ross, 2013b). In response, the Conservative leadership sent out the whips. Soon after, a number of Conservative MPs reported being given strong instruction not to back Mills’s rebel amendment to the Immigration Bill.

Were Government attempts to conciliate the rebels only a failsafe? On 5 December, Commons Leader Andrew Lansley revealed that the Immigration Bill’s Report stage – during which Mills’s amendment would be debated – would take place in 2014, *after* the transitional controls that Mills sought to extend had expired. Responding to Tory MP Mark Reckless’s demand to know why the Bill’s Report stage had been “delayed”, Lansley responded saying the Bill was not being delayed, but that there was simply “a lot of legislation before the House” (Little, 2013b).

Mills described the delay as a “terrible pity”, with Tory MP Philip Hollobone invoking democratic norms in his condemnation of the timetabling: “We have been denied a vote expressing views of our constituents” (Ashton, 2013).

However, contrary to those pronouncements, it seems that the delay of the debate until the new year was intended to serve a largely *symbolic* function. It would have made little practical difference because the measure could not have become law until the Immigration Bill had received Royal Assent, probably in May 2014, long after the expiration of the labour market controls on Romanian and Bulgarian migrants. Symbolically, though, delaying the Commons Report debate until 2014 would render opposition to the expiration of controls, *after the fact*, moot. Recording a vote against their expiration *before* the fact seems more politically meaningful, even if it would be no more consequential in legislative terms.

Nevertheless, support for the amendment grew to include John Whittingdale, the chairman of the Commons Culture, Media, and Sport Committee; Bernard Jenkin, the chairman of the Commons Public Administration and Constitutional Affairs Committee; and former Tory ministers Bill Wiggin, James Duddridge, and Sir Gerald Howarth.

In late January, a week before the Commons Report stage was scheduled to take place, Mills reiterated his intention to pursue his amendment, though in modified form. It would no longer seek to *extend* but *reintroduce* the controls that expired earlier that month.

On 23 January, *The Guardian* reported that the Government had dispatched John Hayes, its “ambassador to the Tory right”, to try and reach agreement with Mills and other rebels (Watt, 2014a). It confirmed suspicions that the Bill had indeed been, “held up after Sir George Young, the chief whip, told No 10 that it cannot proceed until agreement is reached with Mills”. But after meeting with Hayes, Mills said he remained unimpressed, even with the announcement, offered as a concession before Christmas, to prevent EU migrants from claiming benefits until they had been in the UK for three months.

Meanwhile, support for a second amendment, unrelated to Mills’s, had been gathering pace. The brainchild of former solicitor and Conservative MP Dominic Raab, the amendment, which had accrued the support of 105 MPs, forty-two more than Mills’s amendment, sought to prevent foreign nationals who had been sentenced in the UK to a year or more in prison from appealing deportation on the basis of Article 8 of the European Convention on Human Rights (right to a family life; see Footnote 19). Under Raab’s amendment, the Home Secretary, rather than judges, would decide

whether offenders' family links were strong enough to allow them to avoid deportation.

At the Commons Report stage, on 30 January 2014, the Bill returned to the floor of the House with fully fifty Government amendments. While most of these, were, as Theresa May said, mostly of a minor and technical nature, they also included what would become by far the most controversial provision of the whole Bill: New Clause 18, which would grant the Home Secretary the power to deprive a naturalised British person of their citizenship if that person had conducted themselves in a manner “seriously prejudicial to the vital interests of the United Kingdom” *even if it would render the person stateless as a result*.

In presenting the new clause to Parliament, May noted that depriving a person of their citizenship, “is one of the most serious sanctions a state can take against a person and it is therefore not an issue that I take lightly”. She stated that the new clause was a “consequence of a specific case” (Hansard, 30 January 2014, col 1040). That case was of Hilal Al-Jedda.

Al-Jedda was an Iraqi national who moved to the UK in 1992 with his wife and claimed asylum. In 2000, he and his wife were granted British citizenship, immediately losing their Iraqi nationality under Iraqi law. In 2004, Al-Jedda was detained by British armed forces in Iraq, because of suspected involvement in terrorism. In December 2007, the Labour Home Secretary, Jacqui Smith, made an order depriving him of his citizenship on the ground that it would be conducive to the public good. However, such an order could not then be made if the Home Secretary was satisfied that it would render the person subject to it stateless. In the case of Al-Jedda, however, that seemed to be exactly what happened.

Al-Jedda challenged the order depriving him of his British nationality before the Special Immigration Appeals Commission (SIAC) on the grounds that the order had made him stateless and was therefore void. SIAC rejected Al-Jedda's challenge, but was directed to rehear the issue by a higher court: the Court of Appeal. SIAC came to the same conclusion. However, the Court of Appeal rejected it as erroneous in law (Equal Rights Trust, 2013). The Secretary of State, then Theresa May, challenged the Court of Appeal's decision before the highest UK court, the Supreme Court, which heard the appeal on 27 June 2013. The Supreme Court dismissed May's appeal on 9

October 2013. In so doing, it restored to Al-Jedda his British citizenship because its deprivation had rendered him stateless, and was therefore unlawful.

The last-minute tabling of this critical new clause, just one day before Report, attracted condemnation from across the House. Conservative MP Peter Bone asked May if she thought it “unfortunate” that such amendments were not included in the original Bill, “rather than tabling them on Report and not giving us enough time to debate them?” Shadow Immigration Minister David Hanson was more scathing. He asked why, given the seriousness and complexity of the issue, May had “tabled the new clause twenty-four hours before Report without consulting any outside bodies?” The situation, said Hanson, was such that the Opposition had had to table ‘manuscript amendments’ to deal with the serious concerns the new clause raised. This has significant consequences for Commons scrutiny. Manuscript amendments are tabled on the day of the debate itself, without prior notice. As such, they do not appear on the day’s business papers and are rarely selected for debate – a significant blow to the informed deliberation required for Parliament to provide an effective check on the executive.

It is to that problem which Hanson spoke when he observed that (Hansard, 30 January 2014, col 1056):

A range of outside groups would like to examine the consequences of the proposed legislation, yet today the House of Commons is expected to approve it. The Opposition want to reserve judgment on some of the details that have been mentioned. We want to look at the measures, take advanced legal advice and consult outside bodies, which the Government should be doing, so we can consider the implications.

More specifically, Hanson noted that the Immigration Law Practitioners’ Association had sent a brief at 4am that day. “That was the first opportunity it had to put down its views on this matter,” said Hanson (by which he meant that it was the first opportunity that Alison Harvey had had), adding that ILPA noted that they did not have enough time to address the “complex questions” raised by the provision (Hansard, 30 January 2014, col 1056).

Jeremy Corbyn highlighted that this was no special case, but was “indicative of the whole approach to the Bill”, adding that, “it has not been adequately debated anywhere”, and that, “Most of it will be not be debated today and it will pass through this House unexamined” (Hansard, 30 January 2014, col 1056).

Interviewees were sure that the late introduction of the new power was no coincidence, but part of a political strategy to prevent its effective scrutiny, given that it would likely be particularly contentious. The result of this tactic would be to grant the Bill smoother passage and enhance its robustness to amendment.

But others suggested that the late introduction of the clause also served a second purpose: filibustering. What did the Government intend to filibuster? Strangely enough, the backbench amendment from within its own party, that of Nigel Mills. This is the point to which Pete Wishart alluded when he stated that May had “brought forward the measure to prevent proceedings on what Conservative Members want to discuss and vote on.” To this, Wishart added remarks echoed (in broad outline) by a number of interviewees:

[T]his is all about seeing who can be toughest on immigration. I have to say to the Home Secretary, “You’re not gonnae win that one – forget about it. You cannot out-UKIP UKIP. They are the masters of nasty, pernicious populism, and you’ll never beat them. (Hansard, 30 January 2014, col 1079)

Although allowed within the rules, filibustering is understandably recognised to entail a perversion of deliberative ideals and an undermining of the legislature’s power. It is possible only because of limits on time. Commons Report on the Bill was allotted just four and a half hours. Yet, taking a number of interventions whilst explaining the Government’s amendments in detail, May had managed to take up roughly one third of that time. Would there be space to hear Mills’s amendment?

Before Mills was the amendment tabled by Dominic Raab. Then Liberal Democrat Sarah Teather spoke to ten of her amendments, as well as to Yvette Cooper’s Amendment 1, which sought to delete from the bill the entire provision to limit appeal rights. As time ran short, Labour MP John McDonnell expressed his annoyance at the subversion of the debate:

Mr Deputy Speaker, you have rightly asked us to curtail our speeches and I shall try to complete mine in four minutes, but I am seething with anger. The Bill affects many of my constituents, and this is the only time for backbench MPs to introduce or speak to amendments on Report. I am being denied that opportunity because most of my amendments will not be reached today. (Hansard, 30 January 2014, col 1096)

Such was the case for Conservative MP Nigel Mills. His amendment, which had excited so much chatter, debate, and controversy, whilst revealing a split in the Conservative party over both immigration, and its EU membership, was never heard. Time had run out.

When it came for the House to vote, the Government's new power to render citizens stateless was approved overwhelmingly: 297 Ayes to 34 Noes.

Dominic Raab's New Clause 15 was rejected, receiving 97 votes for it, and 241 votes against.

When Yvette Cooper's Amendment 1 was put to a vote, an amendment which sought to remove altogether the Bill's clause limiting appeal rights, the support was impressive. It received 210 Ayes. But again, a victory was recorded for the Government: it also attracted 301 Noes.

The Bill's Third Reading stage, which does not allow for the tabling of amendments, lasted just twenty-one minutes. Much of that time was given to a stout defence by May of the Bill's underlying principles and provisions. In a response that, as ever, relied heavily upon democratic norms, especially on the importance of debate, Shadow Immigration Minister, Yvette Cooper, said:

Even though Parliament has had hardly any business...there has been no debate today. On the proposals of Tory backbenchers on Bulgaria and Romania, there has been no debate today. ... A series of amendments has been tabled by Members from all parts of the House, but none of them has been debated today.

What have we had instead? The Home Secretary pulled out of her hat, at the last minute, a new power on citizenship, with no consultation and no scrutiny, in a desperate attempt to distract her own party... (Hansard, 30 January 2014, col 1126)

The Bill was voted overwhelmingly to progress to the Lords: 295 Ayes to 16 Noes. It therefore left the Commons without amendment by non-executive MPs.

11 The House of Lords

How can it be that in the UK's bicameral legislature it is the unelected chamber, pejoratively labelled the "House of Cronies" (Sampson, 2005), that safeguards more effectively than its fully-elected complement the rights of some of society's least privileged people, such as asylum seekers and immigrants? This might be thought especially perplexing, given that its average member is a sixty-nine-year-old, highly privileged white man appointed for life by the government of the day⁴⁸.

In this chapter, I endeavour to show that when examining the House of Lords in its scrutiny and amendment of the Immigration Bill, and hence, in its constitutionally-defined role as a check against executive power, and especially the restrictionist bent of that branch of the government, this is, against expectation, what one finds. The question of why one finds this has long fascinated political analysts. It is a difficult question requiring a multifaceted answer, which proceeds in this study by means of a comparative analysis of the two Houses of Parliament.

It must first of all be said that as political institutions, the British Houses of Parliament are much more alike than dissimilar. They both have debating chambers, in which, on one side, the government of the day describes and defends its prospective legislation. Also, the Opposition benches stand in parallel across from those of the government, in parallel, from which Opposition members make speeches, putting questions to the Government regarding its policies, or debating the issues of the day. Further, each is a domain of power and argument, in which actors are locked in a struggle of wits, eloquence, and rationality. Each provides an opportunity for general discussion of the underlying principles of bills, as well as line-by-line scrutiny. Each allows for the tabling of amendments. Each allows for sessions in which any member

⁴⁸ On 13 February 2014, there were 780 Peers in the House of Lords, comprising 667 Life Peers, eighty-eight Hereditary Peers, and twenty-five Bishops, none of which were elected by the public, unlike Members of Parliament in the House of Commons (UK Parliament, 2014a). Life Peers are appointed by the Queen on the advice of the Prime Minister to serve for their life. Hereditary Peers, by contrast, inherit their membership.

of that House can participate. Each allows for relatively free debate in which only one member, who stands while the rest sit, may speak at any one time. Both Houses may decide questions by vote, in which MPs or Peers walk into one of two lobbies, thereby indicating their support or opposition. Both Houses conduct most of their business in public, before television cameras and microphones, and all debates are transcribed in records, known as Hansard, which are readily accessible online. Finally, both Houses have a number of stages through which a bill must progress to become law.

A new Minister of State for Immigration and Security

The Immigration Bill left the House of Commons on 30 January 2014, arriving in the House of Lords for its Second Reading debate ten days later, on 10 February. Two days earlier, our Immigration Minister, Mark Harper, resigned from his post after discovering that the Colombian woman he had paid to clean his flat for the past six years was an irregular immigrant. Harper had conducted only one full check on her background in 2007 when he began employing her, at which time the woman had apparently presented a Home Office letter confirming she had indefinite leave to remain. However, on requesting the Home Office double-check the cleaner's status, Harper learned that his cleaner was in the country unlawfully. The irony was not lost on the press. *The Times*, for example, reported that Harper appeared to have "fallen victim to exactly the obligations that he is seeking to impose" (Grimston and Summers, 2014).

Harper was replaced later that day by James Brokenshire, Conservative MP for Old Bexley and Sidcup, and formerly a junior minister: the Under Secretary of State for Crime and Security. A lawyer by training, in his first speech as the new Minister of State for Immigration and Security, Brokenshire said:

For too long, the benefits of immigration went to employers who wanted an easy supply of cheap labour, or to the wealthy metropolitan elite who wanted cheap tradesmen and services – but not to the ordinary, hard-working people of this country. (Warrell and Rigby, 2014)

Given the circumstances of his predecessor's resignation, Brokenshire's remarks understandably created a stir.

The Commons and the Lords: a comparison

In this section, I sketch a comparison of the Commons and the Lords with respect to their institutional design and political culture (the first two dimensions of my POS framework). If I speak as if the findings of this case study reflect more enduring patterns of conduct between the Houses, it is because such a view was supported by my research, most especially by my interviewees.

At the time of this study, the average age of a member of the House of Lords, or 'Peer', was sixty-nine (UK Parliament, 2014b), twenty years older than the average MP (UK Parliament, 2014c), roughly thirty years older than the average citizen (Office for National Statistics, 2014: 11), and around thirty years older than the average migrant worker (Rienzo, 2016: 3). The membership was seventy-five per cent men and twenty-five per cent women (UK Parliament, 2014b), a smaller disparity than in the Commons, where women constituted twenty-two per cent of the total (UK Parliament, 2014c), but still far from the gender distribution in the UK-born and foreign-born populations, which is for both close to equal. Although Parliament has no official statistics on the ethnicity of its Peers, unofficial reports estimate that in 2016 just fifty-one out of the House's 800 Peers were ethnic minorities: 6.4 per cent (Audickas, 2016: 7).

From this picture of a Lords so profoundly unrepresentative of both the general and immigrant populations – with respect to such basic characteristics as age, gender, and ethnicity – it is perhaps little wonder that commentators have held low expectations of its ability to represent effectively the interests of those it should serve (for example, Cowan, 2016). How could such a pale, male, aged elite possibly be expected to understand and defend the interests of people whose life experiences are so different from their own?

The answer is to be found in seven features of the Lords, which distinguish it from the Commons.

No Government majority

The first difference, and it is an important one, is that unlike in the Commons, in the Lords *the Government does not have an overall majority*. Partly, this is because the Peers are not elected like MPs, but appointed by the Prime Minister of the day,

sometimes on the recommendation of the House of Lords Appointments Commission. Formally, however, all Peers are created by the Sovereign. Unlike in the Commons, a majority is not thought essential for a government to conduct its business. After all, the Lords can only delay a bill. It cannot throw them out. If a bill receives non-Government amendment in the Lords, it must return to the Commons for approval. And in the Commons, the Government has a majority.

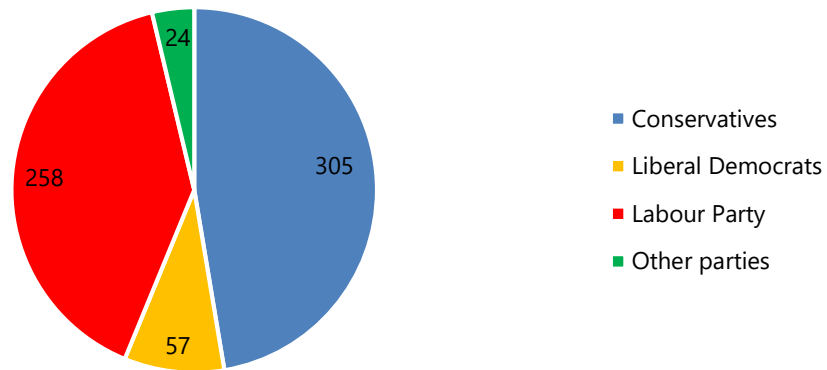
Crossbenchers

A second difference, and which is partly constitutive of the first, is that unlike in the Commons, the Lords contains a large number of *crossbenchers*. At the time of this research, there were 180 crossbenchers in the House of Lords, constituting twenty-three per cent of all Peers. Crossbenchers are independent Peers without formal alignment to any political party. As such, they do not report to whips. This fact of composition has an important impact upon the chances of non-Government amendments, and means, as one Peer imparted to me, that the strategy of opposition Peers in the Lords differs from that adopted by opposition MPs in the Commons.

Most notably, it is a strategy directed to the crossbenches. If a Peer can convince the Official Opposition to get behind their proposal, whilst also convincing enough crossbench Peers to vote for her amendment, she can, so the rule of thumb goes, defeat the Government on a division. A comparison of the composition of the Commons and Lords by party at the time at which amendments to the Immigration Bill could be received is given in Figure 9 below.

The House of Lords

Composition of the House of Commons (as of 19 November 2013)



Composition of the House of Lords (as of 3 March 2014)

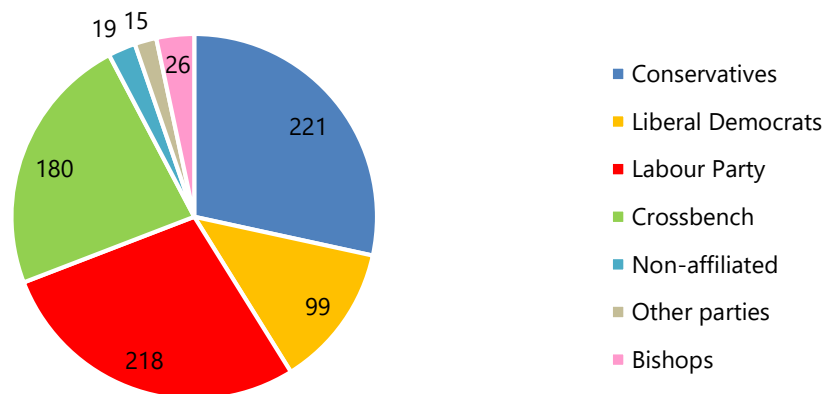


Figure 9 Composition of the House of Commons and the House of Lords

My interviewee's point is based on the assumptions, born from long experience, that, in general, non-crossbench Peers vote in accordance with the position of their party, whilst crossbenchers, beholden to no party, are more independent, more receptive to "force of argument", as one interviewee put it, and whose positions, therefore, are determined more by rational considerations and the desire to make responsible, rather than simply expedient, political choices. The presence of independent crossbenchers brings the context of political persuasion in the Lords far closer than is possible in the Commons to Habermas's deliberative ideal. The idea that arguments should be judged solely on the basis of their rational strength is impossible in a House where so few of its members are free of powerful party influence. Such a substantial complement of

crossbench Peers thus provides an effective counter to the domination of rational and responsible decision-making by the exigencies of party politics, manifest in the disciplinary function of the whip, and the pressure to ‘toe the party line’.

Greater independence of party-affiliated Peers

The third difference between the Houses is a more general form of the second: typically, putting aside the greater independence of crossbench Peers, *party-affiliated Peers are more independent than their Commons counterparts, MPs*. The main explanation for this is well known. For those Peers with a party affiliation, who are by virtue of that affiliation incentivised to follow the party leadership, their careers are typically behind them. They have already ‘made it’. They are in little need of social or political advancement. For such Peers, the professional incentives to toe their party’s line are considerably weaker than those for MPs. So, too, are the disincentives of rebellion: the reprimands of whips, stalled party advancement, and hence continued life on the backbenches with no promise of professional development. As one Peer told me, “my whip cannot hold anything over me, unlike my colleagues in the Commons.” As such, the asymmetries of power in Parliamentary-whip relationships are substantially smaller in the Lords than in the Commons. In the elected House, party sanctions loom large. As one Parliamentarian I interviewed lamented, there has long been manifest in the House of Commons a dearth of even minimally independent MPs.

The claim that Peers are more independent, more likely to vote by conscience than my party diktat, was thought by interviewees to be reflected by Peers’ greater frequency of rebellion. However, this general perception is hard to validate statistically. This is because the action of whips is not publicised, so it is difficult to know in any particular instance whether a party-affiliated Peer has defied their whip, which should be the proper definition of rebellion. In statistical counts, such as those conducted by TheyWorkForYou.com, a vote is typically held to be rebellious if it is in opposition to the majority vote of a Peer’s colleagues. The problem with such a count is that it will also include ‘free votes’, also known as ‘unwhipped votes’, where members are not pressured to vote a certain way by their party leaders, traditionally because the issue is viewed as a matter of personal conscience.

Nevertheless, the voice of the Lords as a whole may be considered to be more ‘counter-Government’ than that of the Commons, reflecting not only the greater

independence of party-affiliated Peers, but also the large number of crossbenchers. While the House of Commons defeated the Coalition just six times, the House of Lords inflicted ninety-nine defeats.

There is a kind of economics that underpins the rebellion of party-affiliated Peers. Its currency may be given our label “political capital”, a term with widespread usage, including by politicians themselves. Interviewees revealed that if a Parliamentary rebels infrequently, then each rebellion carries more weight. Conversely, an act of rebellion by a Parliamentary known to rebel frequently reduces the significance of that rebellion. The Peer that rebels often, even for sound reasons, risks being labelled a “troublemaker”, as one Peer interviewed described it. The actions of a troublemaker carry less weight than the actions of the ‘loyal Peer’, who on the rare occasion of rebelling is perceived to do so because of the weight of her conscience. When such a Peer rebels, the perception among their colleagues is that the rebellion reflects the sincere belief that, “Something must be really wrong with the legislation”. The Peer that rebels infrequently, even when they might wish to have rebelled more frequently, ‘saves up’ their political capital, endowing future rebellions with greater political force. There is thus an inversely proportional relation between a Parliamentary’s frequency of rebellion and each rebellion’s impact. As for material objects, such as precious metals, the rarer the rebellion (vis-à-vis its commissioning actor), the greater its political worth. Following this logic, it becomes important for each party-affiliated Peer or MP to choose their rebellions wisely. As one Peer said to me: “political capital must be well spent.”

It is nevertheless important to realise that though Peers may be more independent than MPs, they are still whipped, and apparently rebel infrequently. They are also reluctant, said an interviewee, to stand their ground against the Commons. They value the legitimacy that being elected confers to its MPs.

More deliberation

In our analysis of the Commons, we saw that its debates were subject to strict timetabling. There was also evidence, beyond the consensus view of the MPs I spoke to, of the Bill’s journey being sped up: there were on a Tuesday and Thursday *concurrent* sittings of the Committee, producing, with regard to deliberation, a doubly negative impact. First, it increases the material to be scrutinised on those days, whilst, second, reducing the time for MPs to prepare their scrutiny of it. Consequently, only

a fraction of MPs' tabled amendments was actually discussed. This was a point bemoaned (I do not think that is too strong a word) by one interviewee, who noted with others the unusual pace at which the Bill was rushed through its Commons stages. In the Lords, by contrast, *there are no time limits* at Committee or Report. In the Parliamentary debates on the Immigration Bill, it showed: in the Commons, the Bill was discussed publicly for over thirty hours; in the Lords, the Bill was discussed for almost twice that time: fifty-six hours and fifty-nine minutes. Such tight constraints on Commons debate at Committee and Report are obviously in strong opposition to the democratic tenet that deliberation be free.

One is reminded of Socrates's trial defence against the dual charge of corrupting Athenian youth and impiety against the Pantheon of the city-state, for failing to believe in Gods, and allegedly creating his own. Socrates begins his defence by asking that the jury judge him by the truth of his statements, but concedes towards its close (Plato, 2003: 62):

I am convinced that I never wrong anyone intentionally, but I cannot convince you of this, because we have had so little time for discussion.

As for Socrates in ancient Athens, so for MPs in contemporary Britain: political debate suffers under constraints on time.

More participation

Relatedly – and again, resulting solely from institutional design – the Lords allows for *wider* participation in deliberation. In the Commons, there was only a single stage propitious to serious Bill scrutiny: Committee. And at Committee, twenty out of the twenty-one Committee Members participated. Table G summarises the activity of the Committee's Members, where an 'intervention' is an oral statement by an MP.

Table G MPs' activity at Commons Public Bill Committee

Committee Member (party)	Number of interventions	% of all interventions	Number of amendments moved
Bain, William (Lab)	24	3	0
Baker, Norman (Minister for Crime Prevention, LD)	83	11	0
Dowd, Jim (Lab)	8	1	0
Doyle-Price, Jackie (Con)	3	0	0
Hanson, David (Shadow Immigration Minister, Lab)	170	22	25
Harper, Mark (Immigration Minister, Con)	156	20	52
Hillier, Meg (Lab/Co-op)	93	12	5
Huppert, Julian (LD)	41	5	10
Jones, Helen (Lab)	65	8	27
Kirby, Simon (Con)	4	1	0
McFadden, Pat (Lab)	25	3	0
Mills, Nigel (Con)	7	1	1
Milton, Anne (Con)	7	1	0
Opperman, Guy (Con)	24	3	0
Paisley, Ian (DUP)	0	0	0
Patel, Priti (Con)	9	1	0
Robertson, John (Lab)	16	2	1
Smith, Henry (Con)	20	3	0
Soames, Nicholas (Con)	3	0 (0.4)	0
Syms, Robert (Con)	4	1	0
Wilson, Phil (Lab)	14	2	22
TOTAL	776	100	109

(Note: amendments do not sum to 109 as some amendments are tabled by multiple MPs)

The data reveal participation that is highly skewed, in that discussion was dominated by just six Members. A total of 608 interventions, or seventy-eight per cent of all interventions, came from these six Members, who comprised just twenty-nine per cent of the Committee. The prominence of three of these is to be expected: the two Government ministers, Mark Harper and Norman Baker, and the Shadow Immigration Minister, David Hanson. Only three other MPs made a substantial number of contributions: Meg Hillier, Julian Huppert, and Helen Jones, respectively. Their efforts contrast sharply with nine of the Members, or forty-three per cent of the Committee. When scrutinising the substance of their interventions, these nine may be said to have contributed virtually nothing of value.

Notably, the ten Conservative MPs, who comprised just under half of all the Committee's Members (forty-eight per cent), remained largely silent, contributing a total of just eighty-one interventions, (equating to ten per cent of all interventions). This lack of scrutiny from the majority ruling party lends credence to the views of the MPs quoted earlier: that at Committee, party loyalty trumps proper legislative scrutiny. Also revealing is that just seven Committee Members participated in the earlier Second Reading debate, thus reinforcing Griffith's point about Members' lack of interest (Griffith, 1974: 53).

In the Lords, by contrast, this most critical stage, Committee, was, per convention, extended to the 'floor of the whole House'. Any Peer may participate. Sixty-five did. Moreover, there is greater scope for serious scrutiny of a bill in the Lords because the subsequent Report stage retains much of the character of Lords Committee: *it is open to the whole House, with no time limits*, allowing for the continuation of detailed bill scrutiny. In the Lords, both the Committee and Report stages are, in the words of one Parliamentarian interviewed, "where the action is". Thus, a better indicator of Peer participation in the serious scrutiny of the Immigration Bill is the total number of unique Peers that participated in both Lords Committee and Report, which was eighty-eight, who collectively contributed 732 interventions. This means that the number of participants in the key Lords stages was more than fourfold that in the Commons.

In addition to there being limited participation at Commons Committee, at Commons Report the debate is subject to strict time limits: for the Immigration Bill, just four-and-a-half hours. As such, at Commons Report, the serious discussion and amendment of legislation is vulnerable to obstruction. For the Immigration Bill, the debate was subverted by a filibuster. Most amendments tabled could not be discussed, or voted on.

More non-executive amendments discussed

The sixth difference stems from the features of institutional design highlighted by points four and five: the lack of time restrictions, and the provision of an additional forum, Lords Report, for Peers to continue their detailed policy scrutiny. Because

more Peers participate⁴⁹, in debates less constrained by tight and stringent limits on time over more stages whose conditions are favourable to serious deliberative scrutiny, *more non-Government amendments can be discussed*.

Non-Government amendments are especially important to the Parliamentary process because they are the medium through which executive policies can be challenged, and changed. In the Commons, none were successful, whilst all Government amendments were accepted. As Figure 10 shows, in the Lords as in the Commons, there is substantial polarisation in the success of amendments, depending on whether or not they are tabled by the Government. In the Lords, too, it is rare for non-Government amendments to be successful, while the opposite is true of Government ones. The Immigration Bill was no exception. In the Commons, Government amendments had a formal success rate of one hundred per cent: all of the Government's 106 amendments were accepted. Non-Government amendments, by contrast, had a formal success rate of zero per cent. Not one of the 128 non-Government amendments tabled in the Commons was accepted. The picture in the Lords is broadly comparable. All thirty-three Government amendments were accepted. And just two of the 225 non-Government amendments tabled were accepted: 0.89 per cent.

⁴⁹ Free participation at Lords Committee does not *necessarily* mean that more amendments will be tabled. Also, in the Commons, non-membership of the Committee is not a barrier to the tabling of amendments. A committee Member may speak to an amendment tabled by a non-Committee Member. But, in practice, this seldom happens. And it is more difficult for an MP to discuss an amendment which is not 'theirs' and about which they may feel less enthusiastic than the person tabling it.

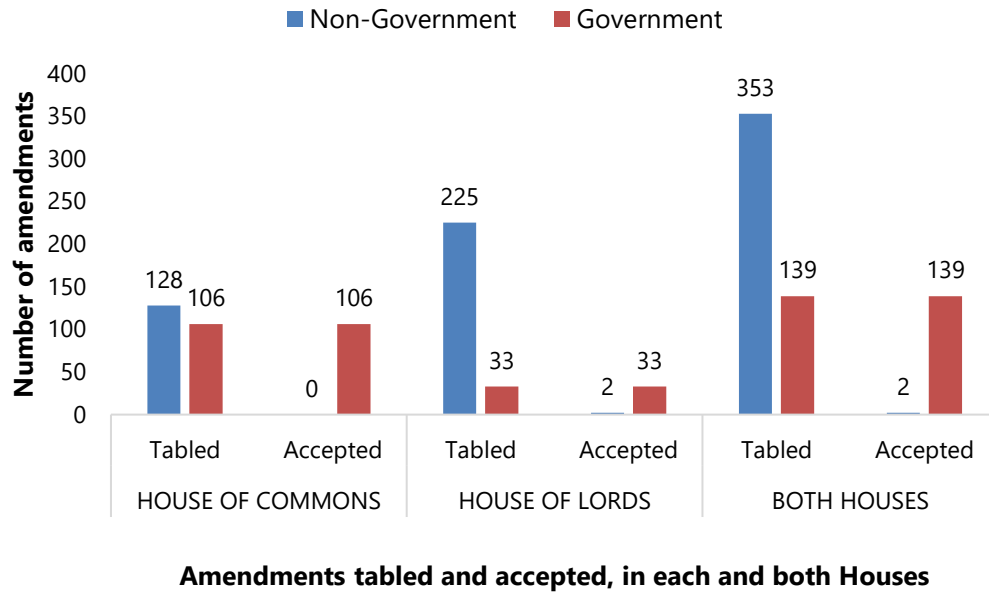


Figure 10 Outcome of tabled amendments to the Immigration Bill in both Houses of Parliament

However, as for Commons Committee, a sole focus on formal success misses subtler aspects of the process. Here, it overlooks an important procedural difference between the Houses: the capacity for non-Government amendments to be discussed.

Non-Government or backbench amendments tabled by MPs for Commons Committee and Report are subject to a ‘filtering process’, or what may be labelled more critically a process of ‘attrition’, by which only a fraction end up being discussed by Committee Members. As one interviewee put it, most Commons amendments “never see the light of day”. In this research, just forty-seven Commons amendments, out of the 128 that were tabled, were actually discussed: thirty-seven per cent. In the House of Commons, this filtering process has four stages, with each of these four stages presenting potential barriers to amendments being discussed – with significant consequences for Parliamentary scrutiny⁵⁰. Figure 11 shows the filtering to which

⁵⁰ The stages are as follows. First of all, an amendment, if it is to be discussed in either House, must be *tabled*. Tabling is the act of formally submitting an amendment to Parliament, which must be in hard copy and delivered by hand or by post to the House Clerks, or the Public Bill Office, of the Parliamentarian’s respective House. For the Immigration Bill, 128 Commons amendments were submitted in this way.

However, for a tabled amendment to be discussed and hence voted on, it must, second, be *selected*. According to the published guidelines for MPs on tabling amendments, selection is “wholly at the discretion of the Chair”. To oil the procedure, MPs are

non-Government Commons amendments to the Immigration Bill were subject. The shaded portion highlights the key figure: the number of amendments *discussed*, just forty-seven out of the 128 tabled, or around thirty-seven per cent. Note that the size of the ‘filter’s’ parts are impressionistic, not accurate reflections of amendment numbers by area.

instructed that the selection “should not be questioned in debate.” The guidance provides some of the reasons for amendments not being selected, such as because they:

- were not tabled within the deadline
- do not make sense as currently drafted, or would ‘wreck’ all or part of the bill
- have been tabled to the wrong part of the bill, or are very vague
- are outside the ‘scope’ of the bill, or of the clause or schedule they are seeking to amend
- would involve expenditure not authorised by a money resolution.

For the Immigration Bill, 111 Commons amendments were selected. This stage is seldom highly attritional.

Yet even if an amendment is selected in the Commons, it may not be *called*. This is the third stage. An amendment may not be called because its content has already been covered by an earlier discussion, but more common is that a Commons amendment is not called due to a lack of democracy’s central underlying resources: time. It is at this stage that most Commons amendments were filtered out, thereby preventing their discussion, and by extension, their being voted on. For the Immigration Bill, forty-nine amendments were called, a loss of sixty-two, almost half of all amendments. This represents, so far, a cumulative attrition rate of sixty-two per cent.

The fourth stage that a non-Government Commons amendment must clear in order to be discussed or put to a vote is that it must be formally *moved*. Only after passing these four attritional stages – after having been tabled, selected, called and moved – can it then be discussed and put to a vote.

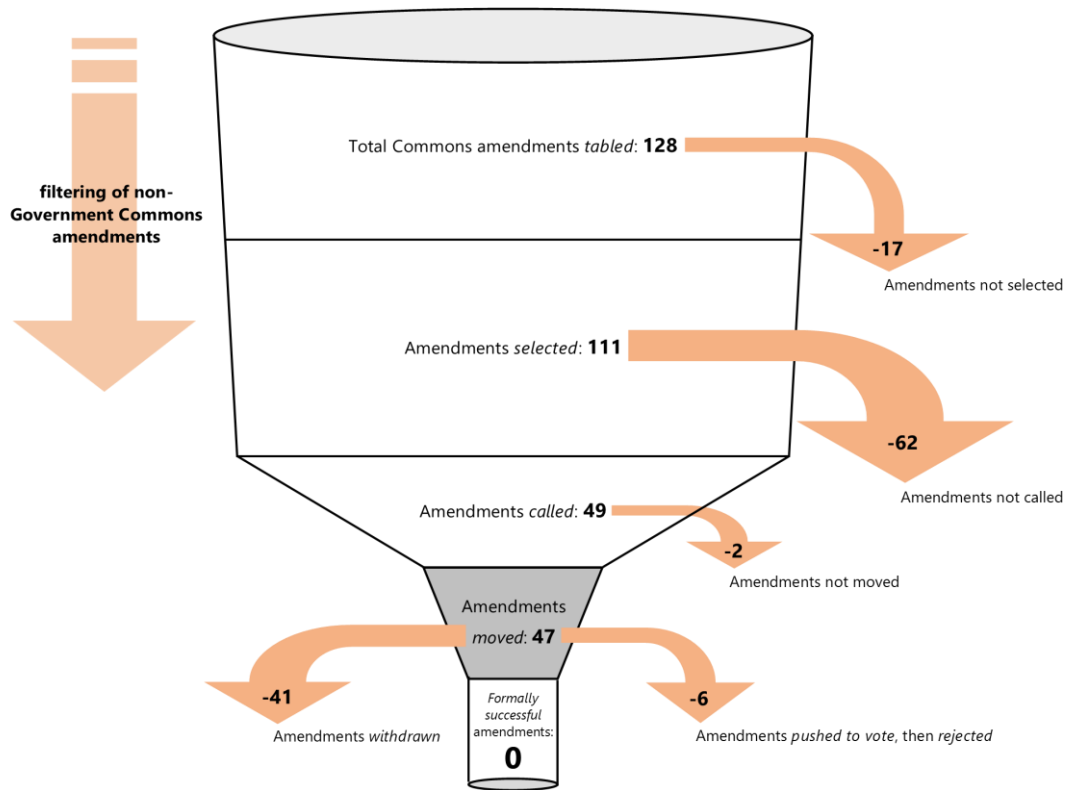


Figure 11 Filtering of non-Government Commons amendments
(shaded section highlights number of amendments *discussed*)

The House of Lords is different in two key ways. First, *there is no filtering of amendments via a process of selection*; and second, *there is no substantial filtering due to amendments not being called*. Indeed, in our case study, only twenty-one non-Government Lords amendments were filtered out by not being called. But this was not for reasons of time, as in the Commons. Instead, it was because their subjects had already been discussed. For these two reasons: almost all amendments tabled in the Lords were discussed: 204 out of 225, or ninety-one per cent. (For the sake of completeness, it should be noted that the Lords differs from the Commons in a third way, in that, by convention, in the Lords, amendments may be discussed *without having been formally moved*, whereas in the Commons, all amendments discussed were typically moved formally beforehand.) Figure 12 shows the filtering of the non-Government amendments to the Immigration Bill in the House of Lords.

The House of Lords

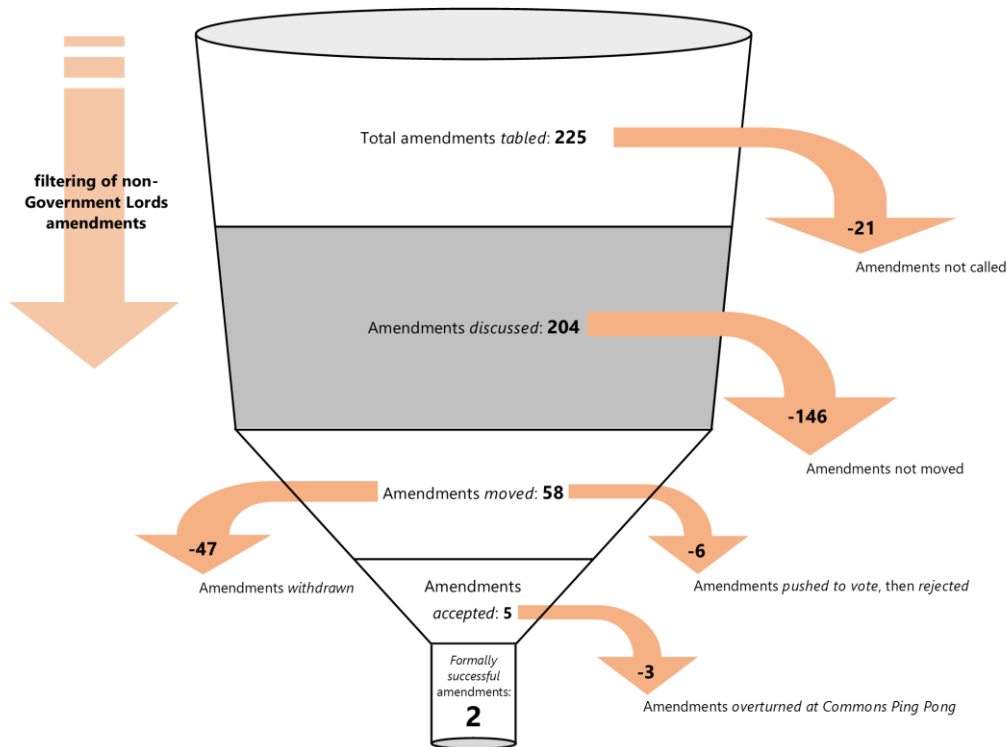


Figure 12 Filtering of non-Government Lords amendments
(shaded section highlights number of amendments *discussed*)

In comparing the fates of the non-Government amendments tabled in each House, the difference in the number of such amendments that were *discussed* is considerable. This is shown in Figure 13. The consequences of these differing levels of amendment attrition may be comparably substantial. For the Immigration Bill, the logic of amendment attrition in the Commons limits participation at Report to those MPs fortunate enough to have their amendments called. But because at Commons Report non-Government amendments must be heard *after* the Government's own amendments, in a debate allotted a limited amount of time (4.5 hours in our case study), this meant that only those non-Government amendments affecting earlier parts of the Bill were heard. That the fate of so many non-Government amendments is subject to these constraining and somewhat arbitrary conditions, which exclude the majority of them from the debate, thereby leaving substantial portions of the Bill undiscussed, while granting the Government further control over deliberation in the Commons, has the effect of reducing the accountability of Government to the democratically-elected chamber.

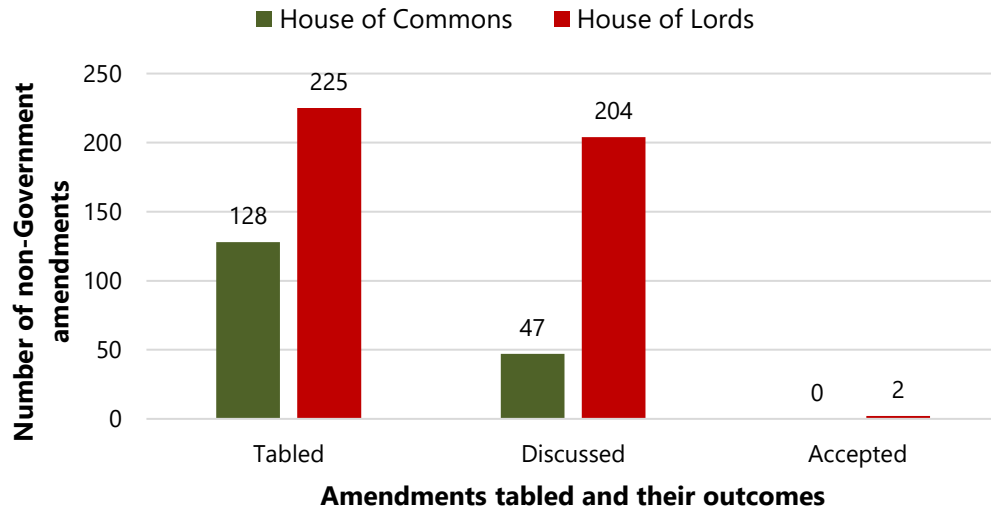


Figure 13 Outcome of non-executive amendments to the Immigration Bill

More expert scrutiny

The House of Lords was not only able to discuss more amendments to the Immigration Bill, covering the full range of its provisions. Its discussion was also notably *more expert*. This is the seventh way in which the Houses differ with respect to their capacity to check the will of the executive. On this factor, the difference between MPs and Peers is remarkable, in two respects. First, the Peers that scrutinised the Bill had greater *collective breadth* of specialisation than their Commons counterparts. Second, they had greater *individual levels* of specialisation than MPs.

But what is specialisation in this context, and how can it be measured?

*Evaluating Parliamentarians' specialisation*⁵¹

If legislative proposals are to be scrutinised effectively in a legislature, the legislators scrutinising it must possess expertise on its content. Only then can deliberations be

⁵¹ The word *specialisation* has been used in research that analyses the expertise of the members of Public Bill Committees to determine whether they are fit to scrutinise legislation effectively. It is an apt term because it captures the possibility that a member's experience and apparent specialist knowledge does not necessarily correspond with – and therefore does not presume – competence. Other terms, such as capability, skills, and proficiency, do not speak so clearly to this possibility.

adequately informed and governments held sufficiently to account. This statement enjoys a virtually axiomatic status among Parliamentarians, political commentators, and academic analysts alike. Being so widely taken for granted, however, it often escapes explicit acknowledgement. Nevertheless, it is an assumption that undergirds much critical commentary of Parliament, especially that concerning the efficacy of the main Commons stage of legislative influence, the Public Bill Committee.

For example, in his 1979 analysis of the function and impact of “Committees in the British House of Commons”, Walkland observed that the MPs appointed typically had little *interest* or *knowledge* in the subject under discussion (Walkland, 1979: 254). Previously, Griffith’s study of the ten-year period before 1974 established that MPs assigned to a Standing Committee may not have bothered to even participate in the preceding Second Reading debate for the bill they had been tasked to scrutinise (Griffith, 1974: 53, cited in Thompson, 2014: 390), with predictably lamentable consequences for their understanding of its content at Committee (Thompson, 2014, 2015a, 2015b).

A lack of interest and expertise on the part of Parliamentarians would, in 2013-14, have been especially injurious to the effective scrutiny of bills, given that they exhibit a now long-observed tendency towards ever-greater length, breadth, and complexity (Korris, 2011: 565). Yet, bills have always been drafted in this way and most MPs have not – and do not – usually come from a background in law. In 2010, eighty-six out of all 650 MPs, just over one in eight, had worked as either a barrister or solicitor [McGuinness, 2010: 5]. Thus, as long as a large part of Members’ political lives continues to be spent in the intellectually demanding and time-intensive scrutiny of lawyers’ argot, including the ‘small print’, legalese is perhaps more an ‘enduring root cause’ of inadequate scrutiny than simply a ‘compounding factor’.

More recent criticisms of the Committee Stage by MPs have, in line with earlier scholarship, focused on deficiencies of Members’ interest and expertise. For example, Diane Abbott MP recently suggested that the specialist knowledge of Members was not taken into account for their appointment to Committees, with government whips ensuring that “anyone who *knows* or *cares* about the legislation does not get on the committee in the first place” (Abbott, 2011, cited in Thompson, 2015b: 4, emphasis mine). Abbott’s view is shared with MPs ‘across the political divide’. The Conservative, Peter Luff, for example, observed that, in general, Committee Members “are not experts” (Hunting Bill Committee, 25 February 2003, col 1116, cited in Thompson, 2015b: 4).

The more recent academic literature tells a similar tale. In an analysis of how best to reform Commons legislation committees, Russell, Morris and Larkin lend credence to the view of Abbott by revealing that, “Committee memberships are manipulated ... to block Members who might prove awkward ... even including ‘expert’ Members” (Russell, Morris and Larkin, 2013: 43, cited in Thompson, 2015b: 4). The notorious ‘Sarah Wollaston incident’ would appear to reflect this problem. In the 2010-12 session of Parliament, Wollaston, a Conservative MP and former GP, felt particularly qualified to serve on the Public Committee for the Health and Social Welfare Bill, and submitted a request to do so. However, this was rejected by her Government-party whips, an outcome Wollaston attributed to her unwillingness to guarantee unquestioning support for the Bill, given her first-hand expertise on its subject.

To what extent did the Members appointed to the Commons Committee on the Immigration Bill possess sufficient interest and expertise to provide effective scrutiny of the draft legislation’s provisions? Were they selected with regard to their ability, or, as is suggested by the Wollaston case, were they selected due to their *lack* of ability to deliver concerned and informed criticism, thereby granting the Bill a smoother passage through Parliament, and a greater chance of its being passed into law with minimal opposition amendment? Also, how does the extent of MPs’ expertise at Commons Committee compare with that of Peers at the Lords Committee and Report stages?

Making sense of specialisation

To be able to answer these questions properly, we will first need some workable concepts to help us make sense of the utility of Parliamentarians’ diverse forms of Bill-relevant specialisation.

Two properties of specialisation are of particular importance to bill scrutiny. The first is what we may call its *mode of acquisition*, specifically, whether it was acquired *first-hand* or *second-hand*. The second property is what I have termed its *subject-focus*, namely, whether the specialisation was focused principally upon immigration – what I call *dedicated* specialisation – or upon some other area, such as housing or healthcare, which is nevertheless relevant to the content of the Immigration Bill. This second form of subject-focus I call *associated* specialisation. Each of these types of specialisation is elaborated on in turn.

The terms *first-hand specialisation* and *second-hand specialisation* were first used in 1968 in a study by Kimber and Richardson, which examined whether Members of British Parliamentary Committees possessed specialisation adequate for their task of scrutinising the prospective legislation of the executive (Kimber and Richardson, 1968). The distinction was then deployed in the most comprehensive recent analysis of the expertise of Public Bill Committees, by Thompson (2013, 2015). I make use of the same distinction here.

Specialisation that is acquired *first-hand* is knowledge or experience acquired either by *formal tuition*, such as that for degrees, apprenticeships, and professional qualifications; or *actual personal involvement* in the areas that are the subject of the legislation. Due to the high workload of the contemporary MP, which typically prevents them from the pursuit of dedicated study and from having a parallel non-Parliamentary career, first-hand specialisation refers typically to expertise that has been acquired *prior* to a Member's election to Parliament. This does not apply to Peers, who have not typically had careers as politicians and have often been appointed to their seats on the basis of leadership in a specialised area.

By contrast, specialisation that is acquired *second-hand* is usually acquired during a Parliamentarian's time in their respective House, typically through ministerial portfolios and membership of Select Committees, Public Bill Committees, and All-Party-Parliamentary Groups. Such specialisation is deemed to be 'second-hand' because the Member has no *direct personal involvement* with its subject matter, having acquired relevant knowledge through their Parliamentary activities.

First-hand specialisation, having been acquired through direct personal experience with the policy subject at issue, is likely to be seen as more authoritative and useful than specialisation acquired through an MP's or Peer's Parliamentary career. Thus, if a Parliamentarian is tasked to scrutinise a healthcare bill, for instance, a pre-Parliamentary career as a physician would be considered more useful than having served on a Parliamentary health committee, during which a variety of other political matters are likely to have vied for the Member's attention. In general, with all other things being equal, this argument seems plausible.

Whilst the *mode of acquisition* of a Parliamentarian's specialisation, whether first-hand or second-hand, is certainly important to an assessment of its value to bill scrutiny, *subject-focus* is arguably a still stronger indicator of its worth in legislative scrutiny. Yet, this particular dimension has *not* hitherto been identified, at least explicitly, in the scholarly literature. My research intends to correct this shortcoming.

For an Immigration Bill, therefore, *dedicated specialisation* would be immigration-centric and concerned specifically and expressly with immigration and its associated processes, issues, policies, laws, and so forth. *Associated specialisation* on the other hand would be acquired not through engagement with the bill's main subject of immigration, but by contact with a different area (health, for instance) that nevertheless has some immigration-related component. By way of example, an MP who has worked as a hospital administrator may possess some Bill-relevant knowledge because of their responsibility to ensure that immigrant patients are charged for their treatment.

The distinction between dedicated and associated specialisation would be most applicable where a bill is wide-ranging and affects areas beyond the main subject indicated by its title. As such, this distinction has particular relevance for the Immigration Bill, which contained clauses directed towards a number of areas beyond those thought to be within the usual purview of immigration legislation. Thus, as well as provisions targeted at the 'immigration system' – border control, visa rules, and naturalisation paths, for instance – the Bill also incorporated proposals that would affect the private rental sector, healthcare, higher education, driving licensure, banking, and so forth. For this reason, even if Parliamentarians do not possess any specialist knowledge of immigration and its laws *in and of themselves*, those with expertise in housing, healthcare, education, and so on, may be said to possess specialisation relevant to the Bill's discussion and scrutiny. In addition, even if such associated specialisation may be acquired *second-hand*, as long as it could be thought to enhance scrutiny of any of the Bill's clauses, it counts here as specialisation.

The fruitfulness of considering this additional property of specialisation, *subject-focus*, may be revealed by pointing out that there are sources of bill-relevant expertise that would be classed as *first-hand* – the 'superior' class of specialisation according to the one-dimensional first-hand/second-hand framework – which nevertheless offer relatively little in terms of effective scrutiny. For example, when applying the first-hand/second-hand scheme, a Parliamentarian's pre-Parliamentary career in immigration law would count the same as having worked as a solicitor specialising in motoring offences. Even though the former source of specialisation would obviously be of greater value to scrutinising the overall Bill, because both are forms of relevant first-hand expertise, they would, in the simpler scheme, be afforded an equal weighting. Thus, the utility of the one-dimensional first-hand/second hand framework is considerably enhanced by the addition of the *subject-focus* dimension.

In relation to this second dimension, *dedicated specialisation* can reasonably be expected, in general, and with all other things being equal, to be more useful than its counterpart *associated specialisation*. To illustrate, a person whose knowledge of the immigration system was acquired through experience as an immigration lawyer is likely to be a more authoritative critic of immigration law than someone whose expertise was acquired in the course of a more general legal practice in, say, human rights. However, as with first-hand and second-hand specialisation, the applicability of this rule is not universal. Any individual case will rest on the precise nature of Parliamentarians' dedicated and associated specialisations, relative to the issue under discussion. On some topics, the person with associated expertise may well be more authoritative than the dedicated immigration specialist. For example, on the Bill's clause concerning the interpretation of Article 8 of the European Convention on Human Rights, the human rights barrister may possess more useful expertise than the immigration solicitor.

One final note: with respect to any *particular source* of specialisation, the categories *first-hand/second-hand* and *dedicated/associated* are treated as if mutually exclusive: specialisation is either first-hand *or* second-hand; dedicated *or* associated. However, with regard to the *individual*, any Parliamentarian may be said to possess *both* first-hand *and* second-hand, as well as dedicated *and* associated specialisation if their (multiple) sources of specialisation support such an assessment. Thus, armed with these two properties of specialisation – its mode of acquisition and subject-focus – we can now classify any source of Members' specialisation according to four discrete categories: *first-hand dedicated*; *second-hand dedicated*; *first-hand associated*; and *second-hand associated*.

The four types of specialisation: what counts?

First-hand specialisation that is *dedicated* could include, for example, a Parliamentarian having worked as an immigration lawyer, an immigration officer at a port of entry, or a civil servant responsible for processing immigration applications. Respondents would also be said to have first-hand dedicated specialisation if, for example, they had studied for a degree on immigration, or had conducted research or published on the subject.

First-hand specialisation that is *associated* could include, among other things, a Parliamentarian having worked as a human rights lawyer, but with no first-hand

experience of human rights law as it pertains to immigration. The rationale is that such expertise can be reasonably expected to aid a Member's scrutiny of the Immigration Bill's provisions on Article 8 of the European Convention on Human Rights. The same would apply to work in healthcare, given the Bill's proposed health charge. Similarly, those with extensive property interests would be considered as possessing first-hand associated specialisation because their experience could be useful in scrutinising the Bill's landlord provisions.

Second-hand specialisation that is *dedicated* could include membership of various committees, notably: the All-Party Parliamentary Group on Migration; Select Committees on immigration; and Public Bill Committees with substantial immigration-related content. Since 2000 there have been seven of the latter – and there is readily accessible data on membership.

Second-hand specialisation that is *associated* could include any expertise in a non-immigration area that was subject to provisions within the Immigration Bill, such as housing, health, and education. Therefore, of relevance would be membership of any relevant All-Party Parliamentary Group, Select Committee, or Public Bill Committee, where topics such as housing, health, and education were covered. Additionally, I also included MPs representing higher-immigration constituencies, that is, those with populations of at least ten per cent who are foreign-born (i.e., not born in England, Wales, Scotland or Northern Ireland, according to the UK's 2011 census). The rationale for this, which was implicit in the Bill's Parliamentary debates and in some of my interviews with Parliamentarians, is that MPs hold regular surgeries in their constituencies. Local people can book an appointment to discuss personally with their MP any matters that concern them. In this way, such MPs are more likely to have to deal with immigration-related cases, such as those with visa problems. In this, I applied the logic of Kimber and Richardson in their classic study of MPs' specialisation in Parliamentary Standing Committees, which has since been used by Thompson in her analyses of the specialisation of MPs in Public Bill Committees (2015a, 2015b). For their analysis, in the case of MPs scrutinising, say, agricultural bills, they counted as specialisation "that possessed by those members who represented rural constituencies" (1968: 98).

Whilst the choice of ten per cent appears to be somewhat arbitrary, the 2011 census revealed that 11.5 per cent of the UK's total population was foreign-born, though this conceals great variation in constituents' migrant populations as a proportion of residents, as suggested by Figure 14. The percentages of resident populations classed as foreign-born in 2011 range from 0.8 per cent in Na h-Eileanan

an Iar, the most north-westerly constituency in Scotland, to fifty-nine per cent in the constituency of Brent North in Greater London. From Figure 14 we can also determine that around sixty-four per cent of constituencies have populations where fewer than ten per cent were born outside the UK. Thus, based upon a ten per cent threshold, a “high-immigration constituency” in this analysis is identified as one that sits in the top third of those with the most foreign-born constituents.

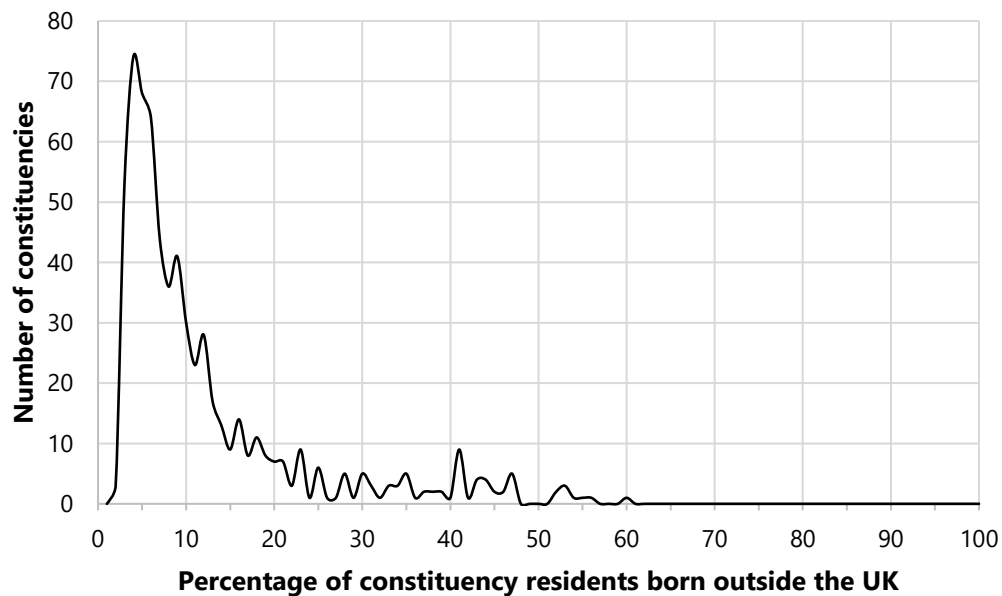


Figure 14 Number of constituencies by percentage of foreign-born residents
(Source: 2011 Census UK)

One could have chosen a higher threshold, such as twenty per cent or thirty per cent, but respondent MPs who spoke of having a “high immigration caseload” resided in constituencies that typically had at least fifteen per cent born abroad. Given that in 2011 the mean *for constituencies* of those born abroad was 11.6 per cent (a statistic deceptively close to the 11.5 per cent for the overall average) with a modal proportion around four per cent and a median around 7.5 per cent, the ten per cent threshold does not seem unreasonable. It is not so low as to make the label “high-immigration constituency” a misnomer. Neither is it too high to exclude constituencies with high immigration populations in absolute terms (in fact, the mean number of foreign-born residents across all constituencies is 12,258). In short, the ten per cent threshold is

appropriate in identifying those MPs with a high enough immigration caseload, and to qualify them as having associated specialisation.

In this analysis of Parliamentarians' specialisation, I therefore considered eight distinct sources of specialisation. These are configured and summarised in Table H, as follows:

Table H Public Bill Committee: sources of MPs' specialisation

	mode of acquisition	
	<i>first-hand</i>	<i>second-hand</i>
subject-focus	<p><i>dedicated</i></p> <ol style="list-style-type: none"> 1. Formal tuition on immigration, e.g., a degree in migration studies 2. Personal experience, involvement, or interest in immigration, e.g., employment as immigration lawyer, immigration official, immigration enforcement officer, civil servant in UK Border Agency/UK Visas and Administration; authored book on migration; lectured on migration 	<ol style="list-style-type: none"> 4. Membership of the All-Party Parliamentary Group on Migration 5. Membership of previous immigration-centric Public Bill Committees: <ol style="list-style-type: none"> a. Nationality, Immigration and Asylum Bill 2001 b. Asylum and Immigration (Treatment of Claimants, etc.) Bill 2003 c. Immigration, Asylum and Nationality Bill 2005 d. UK Borders Bill 2006 e. Criminal Justice and Immigration Bill 2007 f. Borders, Citizenship and Immigration Bill 2009 g. Equality Bill 2009 6. Membership of Select Committees on immigration
	<p><i>associated</i></p> <ol style="list-style-type: none"> 3. Personal experience, involvement, or interest in an area not directly concerned with immigration per se, but which is nevertheless related to the content of the Immigration Bill, e.g., experience as a landlord, or employer; employment as a medical professional, university administrator, employer, banker, registrar, Driver and Vehicle Licensing Agency employee, etc. 	<ol style="list-style-type: none"> 7. Membership of All-Party Parliamentary Groups, Select Committees, and Public Bill Committees, the principal subjects of which are not immigration but which are nevertheless relevant to the content of the Immigration Bill; e.g., health, housing, education, banking, etc. 8. Representing constituencies with high levels of immigration (whose populations are at least 10 per cent foreign-born)

Before examining the findings, a potential weakness of the analysis should be borne in mind. The proxies used to identify Committee Members' levels of specialisation could, in some instances, prove misleading. The criterion of the 'high immigration

constituency' may be especially prone to misrepresentation of this kind. It is by no means certain that all MPs representing such a constituency will possess specialist immigration knowledge.

Second, the analysis is limited by the sources of data. To determine whether Parliamentarians possessed specialisation relevant to the Immigration Bill, and based on the framework depicted in Table H, I conducted biographical analysis, with a particular focus on Members' education, work experience, and Parliamentary career. My principal sources were *Who's Who* and *Debrett's*, each reputable reference works on influential figures in British public life. This information was supplemented with data compiled from media and internet research, especially from the UK Parliament's website, which contains details on MPs' Parliamentary activity.

However, truly comprehensive material about MPs' and Peers' backgrounds is difficult to obtain. For example, information on the degree subjects of some Members could not be found. Moreover, it is possible that some Parliamentarians may have acquired knowledge of immigration and its laws without formal indication. Unfortunately, such knowledge would be missed by this analysis.

In general, however, this study's determination of Parliamentarians' respective levels of specialisation remains robust, I think, in its systematic and cautious approach to measurement.

Specialisation: the Commons vs. the Lords

For the Commons Public Bill Committee, the overall picture regarding MPs' specialisation is mixed. Only three Members appeared to have no relevant specialisation: Nigel Mills and Priti Patel, (both Conservative) and Ian Paisley of the DUP. In the case of Patel, this was perhaps to be expected; she had been a Member of Parliament since only 2010. By contrast, eighteen Committee Members had some form of Bill-relevant specialisation, either first- or second-hand, dedicated or associated. At the same time, there was a notable lack of both first-hand and dedicated specialisation, respectively – the two forms considered most important to effective Bill scrutiny.

With regard to first-hand specialisation, not one Committee Member had relevant dedicated specialisation. None had studied for any specialist immigration degree or other qualification. Neither had any worked in an immigration-focused profession. This was probably because such a profession is rarer than others. Take the medical

profession, for instance. In 2013, the NHS employed over one million employees, whereas the UK Border Agency employed only 22,000 personnel in 2011 (National Audit Office, 2012). In addition, no Member appeared to have *had an interest* in immigration prior to being elected to Parliament, in the sense of having a substantial stake or personal involvement in immigration. Unsurprisingly, though, many Members professed to be *interested* in immigration in that they were intellectually curious about it.

Four Members could be said to have had some form of first-hand associated specialisation, which should have equipped them to more effectively scrutinise the Bill. William Bain had an earlier career as a university lecturer in Public Law, which would certainly relate to the public law principles embodied in immigration law. Meg Hillier worked for three years as a journalist for *Housing Today*, which had relevance for the Bill's landlord provisions. Before her Parliamentary career, Anne Milton worked as a nurse for eight years and as a medical advisor for twenty years – experience that doubtless would have informed her consideration of the proposal to introduce an immigration health charge. Lastly, Guy Opperman worked as a barrister for twenty-one years, including on over three hundred criminal cases (according to his CV on the website of his barristers' chambers: 3PB Barristers, 2016), before becoming MP for Hexham in 2010. Like Bain, his specialism was public law, but with no evidence of practice in immigration law. Nevertheless, Opperman's expert legal knowledge, including the area of human rights, equipped him with a specialisation which, although not dedicated, would have been advantageous to scrutiny of the Immigration Bill.

With respect to second-hand specialisation, the picture is more positive. Of the Committee's twenty-one Members, sixteen appeared to have had some second-hand specialisation relevant to the Immigration Bill. However, of these, just four Members may be said to have had dedicated immigration expertise. Julian Huppert was a member of the All-Party Parliamentary Group on Migration. David Hanson and Phil Wilson both sat on the Public Bill Committee for the Criminal Justice and Immigration Bill 2007; with Wilson also sitting on the one for the Citizenship and Immigration Bill 2008.

In all, sixteen Members possessed associated second-hand specialisation. Of these, eleven represented 'high-immigration' constituencies (with at least ten per cent foreign-born). Notably, seven out of these eleven would not have been classed as having second-hand associated specialisation without this status, six of whom would have had no relevant expertise had this criterion not been included.

However, closer examination reveals that much of this specialisation was not applied to effective Bill scrutiny, with Conservative members making few meaningful interventions and debate dominated by a handful of non-Government MPs, as shown in Table G. This lack of scrutiny from the majority ruling party lends credence to the views of MPs interviewed: that at Committee, party loyalty trumps proper legislative scrutiny. With relevant specialisation seemingly ‘going to waste’, meaningful and effective scrutiny of the Bill is surely dealt a substantial blow.

This may be explained in large part by the process by which MPs are selected to serve on a Public Bill Committee. The MPs that will serve on a Public Bill Committee are nominated by the Committee of Selection. This consists of nine MPs elected by the House of Commons at the beginning of each Parliamentary session. In making its formal nominations, the Committee of Selection’s brief is simple. They must, by virtue of Standing Order 86, “have regard to the qualifications of those Members nominated and to the composition of the House” (House of Commons, 2011: 79).

Taking into consideration the “qualifications” of Members is obviously critical to appointing MPs suitable to the task of scrutinising legislation that is often highly technical and complex. Yet in her research on the operation of the Committee of Selection from 2000-2010, Thompson highlighted its less democratic aspects. Most notably, she described the process by which MPs are appointed to work on Public Bill Committees as “opaque” (2013b: 3). Indeed, the Committee of Selection’s approach to appointments was so obscure, that Thompson, on the basis of her interviews with twenty-one MPs, revealed that it was “a source of uncertainty” for both frontbench and backbench MPs alike. (2013b: 3). This is a revealing point. As MP Graham Allen has observed, if the process by which Members are appointed to Public Bill Committees is unclear *even to Members within the House of Commons*, “it must be completely mystifying to those outside it.” (Allen, 2013: 6)

This applied to the Immigration Bill’s Committee. A little light can be shed on the process by first of all examining who actually sits on the Committee of Selection. More precisely, who made the important decisions that determined the membership of the Committee for the Immigration Bill? On 11 September 2013, one month prior to the Immigration Bill’s introduction to Parliament, this Committee was made up of the following MPs: Geoffrey Clifton-Brown (Chair, Con), David Evennett (Con), Anne Milton (Con), John Randall (Con), Heidi Alexander (Lab), Tom Blenkinsop (Lab), Alan Campbell (Lab), Mark Tami (Lab), and Mark Hunter (LD). Of these, with the exception of the chair, who was appointed by the Government, all were whips from the main parties, *including both Coalition parties*.

It is worth reminding oneself of the principal responsibilities of whips. As my interviewees explained – some of whom had previously acted as whips, or, as in the case of Earl Attlee, were whips at the time of being interviewed – the role of the whip is a multifaceted one. Yet, the principal responsibility for all whips, whether Government or Opposition, is to enforce party discipline, making sure that MPs vote according to the party line. Additionally, Government whips will endeavour to ensure their Government's business is changed as little as possible by non-Government Parliamentarians. Here then, from the perspective of democratic theory, lies a potential danger. As whips are chosen by their respective party leaders, the latter can effectively decide – through the agency of loyal whips on the Committee of Selection – which of their MPs are selected to scrutinise legislation. Unsurprisingly, there is a general impression that party loyalty – toeing the party line regardless of an MP's personal views – is valued more highly than the ability to carry out fair-minded and critically rigorous legislative scrutiny (Thompson, 2013a, 2015b). That is supported by the findings of this thesis.

The situation in the Lords is more positive. As Figure 15 overleaf shows, when compared with the figure for the Commons, slightly higher proportions of Peers possessed relevant specialisation at the two Lords stages favourable to serious legislative scrutiny: Committee and Report. Specifically, ninety-five per cent of Peers who participated in these stages possessed some form of Bill-relevant specialisation, compared with eighty-six per cent for MPs at Commons Committee.

However, this overall figure misses the substantial differences between MPs and Peers in the *types of specialisation* possessed. Particularly notable is the large difference in the possession of *first-hand* specialisation, which results from the large difference in *associated* first-hand specialisation, with ninety-four per cent of Peers possessing this specialisation, compared with just nineteen per cent of MPs at Commons Committee. A second notable difference is in the number of Parliamentarians possessing *dedicated* specialisation, which results mainly from the difference in *second-hand* dedicated specialisation, with fifty-two per cent of Peers possessing this specialisation against just nineteen per cent in the Commons. In fact, on no form of specialisation did MPs, collectively, possess more than Peers.

The House of Lords

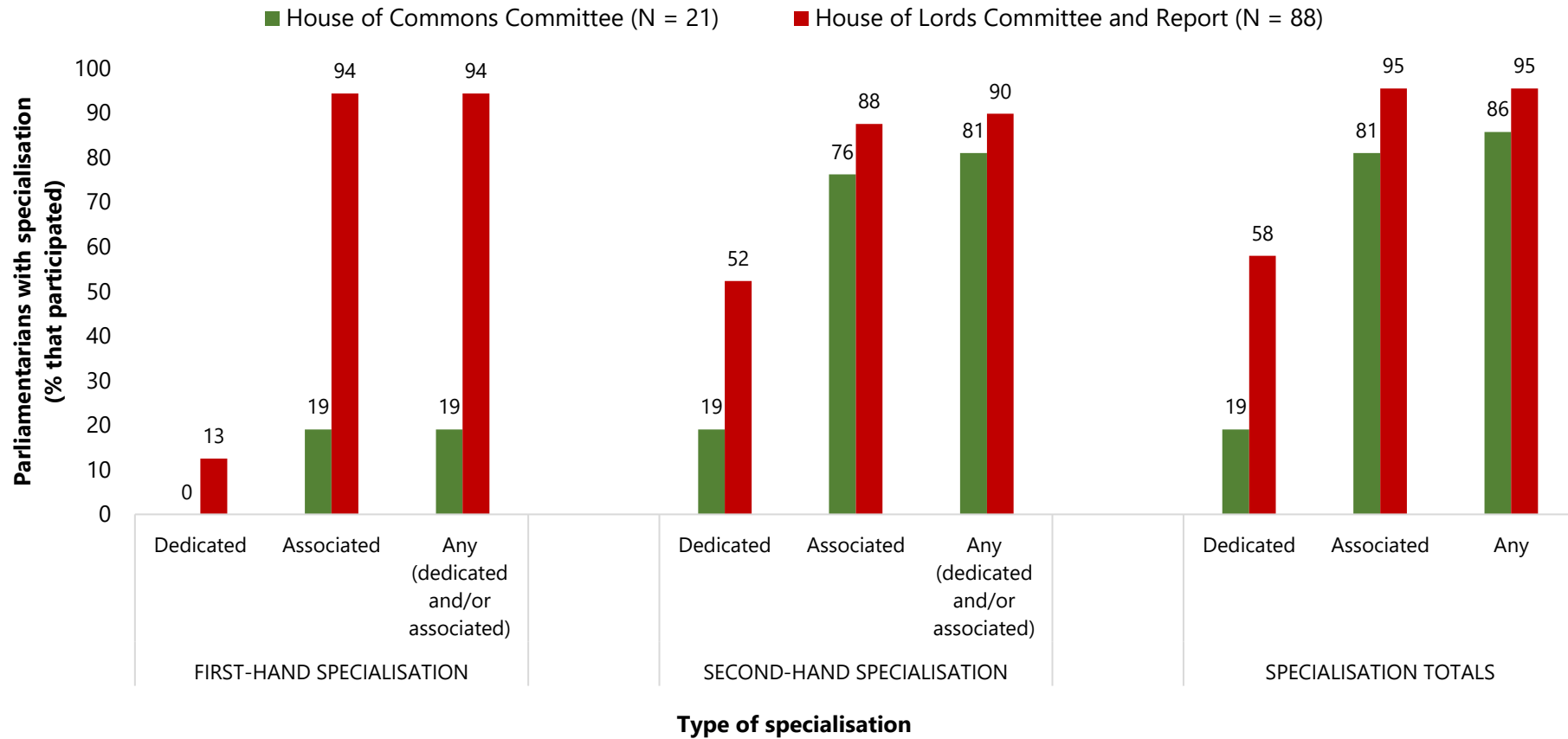


Figure 15 A comparison of MPs' and Peers' specialisation (percentage that participated)

However, whilst it is helpful to compare the *percentages* of Parliamentarians with Bill-relevant specialisation in each House, this does not show what is perhaps of greater significance: the *numbers* of those possessing specialisation. Figure 16 overleaf shows the numbers of MPs and Peers with specialisation who scrutinised the Bill in the stages propitious to that task in each House: the Committee stage in the Commons, and the Committee and Report stages in the Lords. It shows that, due to the Bill being debated in the Lords *on the floor of the whole house*, in which any Peer could participate, many more than the Commons' twenty-one MPs scrutinised the Bill in a detailed way: eighty-eight, more than four times the Commons figure.

The House of Lords

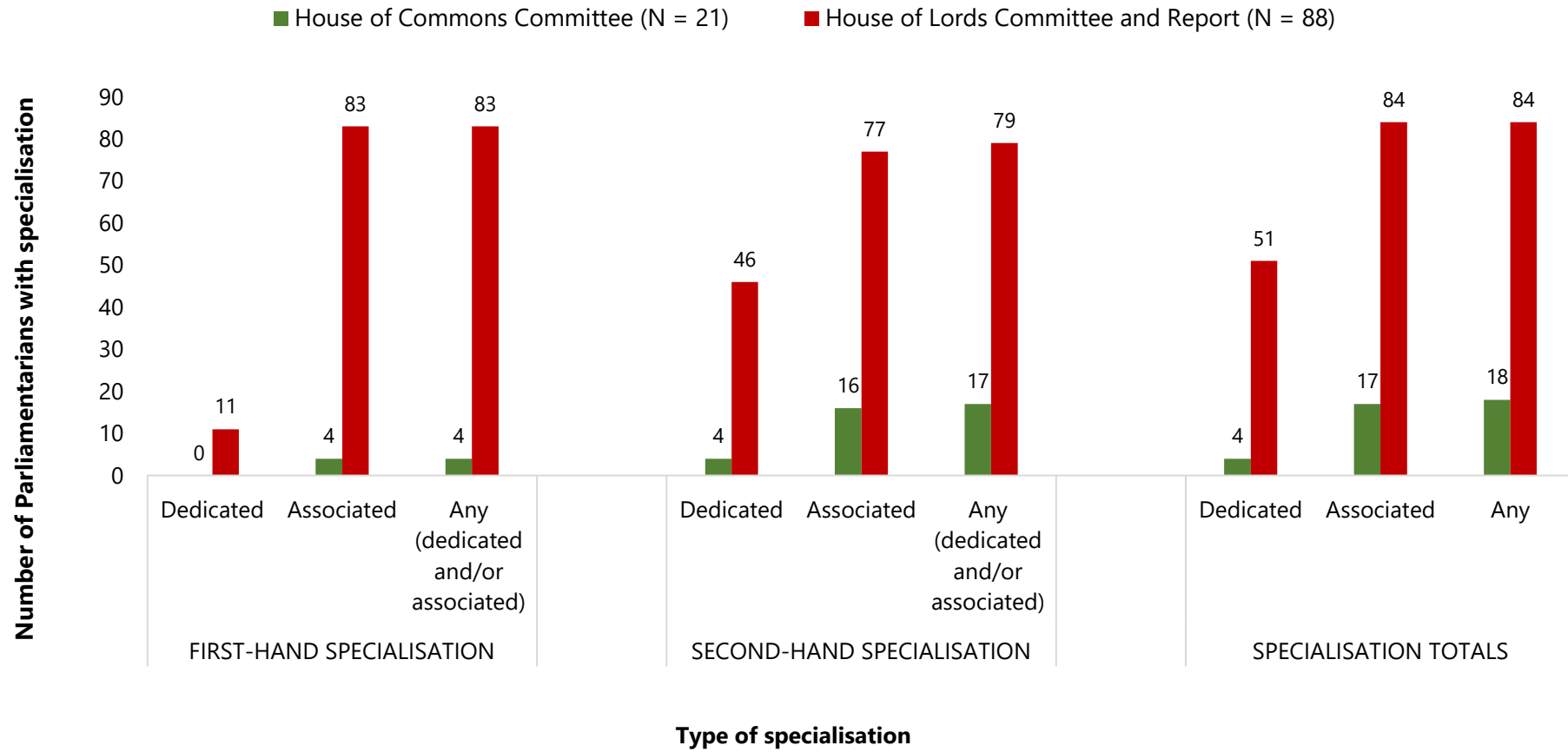


Figure 16 The number of MPs and Peers with specialisation

But again, even this statistical analysis of specialisation misses something important. Measuring as it does only whether a Parliamentarian possesses *at least one source* of each of the four kinds of specialisation, it misses the *extent* of each Parliamentarians' experience and expertise. The difference between the Houses on this measure is particularly striking.

Whilst the average MP possessed around two separate sources of specialisation (1.86) – say, working on a bill, and having had some associated first-hand work experience – the average Peer possessed *around eight* (7.6) separate sources of relevant specialisation. The MP with the most sources of specialisation at Commons Committee was Anne Milton with five. In the House of Lords Bill debates, the Peer with the most sources of specialisation was Lord Avebury, who had participated in over three dozen immigration debates, including extensive scrutiny of five earlier immigration bills. He was joined by fully fifteen other Peers who had worked to scrutinise, often extensively, between two and five earlier immigration bills.

Apart from greater experience and expertise, there are other reasons that Lords scrutiny was (and is) more expert. First, they had more time to prepare it. The Commons Second Reading debate took place just twelve days after the Bill was made public, with Committee, the most important Commons stage for detailed scrutiny, commencing nineteen days after the Bill's publication. By contrast, the Lords Second Reading debate took place on 10 February 2014: 123 days after the Bill was introduced to Parliament (over seventeen weeks) – substantial extra time for Peers and external actors to refine their critique of the Bill. This means that members of the House of Lords had more than ten times longer to prepare their scrutiny than MPs in the House of Commons.

Second, because Peers' scrutiny takes place after that of MPs, they *benefit from the Commons debates*, including the Government's responses to queries seeking clarification.

The difference in specialisation has appreciable consequences. Take Second Reading, for example. Both Commons and Lords debates contributed roughly 60,000 words at this stage. However, the *nature* of the speeches reveals clear differences in practice and approach. In the Commons, fifty-two MPs contributed orally, with there being a total of 234 interventions, a mean of 4.5 interventions per MP. In the Lords, forty-three Peers contributed, but in stark contrast with the Commons, the total number of interventions was just fifty-seven. The average Peer made just over one statement (1.3). That is, most made just one long speech, of mean length 1,053 words.

By contrast, the average Commons intervention was roughly a *quarter* of that, just 252 words.

Because making a good oral submission takes time not only to write, but also to deliver, this statistic provides a quantitative indication of what is qualitatively readily apparent: the quality of debate is higher in the Lords. Speeches are more comprehensive, more accurate, more detailed, more rational, admittedly less pithy, but also less influenced by party-political point-scoring. This should come as little surprise. Peers represent some of the most successful professionals in the country. And it shows in their scrutiny. This is further enhanced because Peers tend to prepare written speeches, and read them aloud, while in the Commons, most MPs do not read from a prepared address.

Table I provides a summary of the differences between the Houses.

THE LEGISLATURE IN IMMIGRATION POLICY-MAKING

Table I Eleven dimensions of comparison: case study findings on the nature of the two Houses

		House of Commons	House of Lords
GENERAL			
1	<i>Legitimacy</i>	Greater than in the Lords because MPs are elected by constituents.	Less than in the Commons because Peers inherit or are appointed to their Peerages.
2	<i>Time constraints</i>	Debates are subject to strict timetabling, even by the government, such as in 'allocation of time' ('guillotine') motions.	In principle, none. The House sets its own timetable, and the government cannot impose any time limits on debates.
3	<i>Strength of whips</i>	<i>Strong</i> ; their potential to hinder MPs' party advancement is a powerful incentive for MPs to toe the party line.	<i>Influential</i> , though notably weaker than in the Commons; their potential to hinder Peers' party advancement is of little concern to Peers.
4	<i>Independence of Parliamentarians</i>	<i>Low</i> ; personal conscience constrained by (1) a strong incentive to toe the party line; and (2) a weak incentive to represent views of constituents.	<i>Higher than in the Commons</i> ; personal conscience constrained only by a comparatively weak (or no) incentive to toe the party line.
5	<i>Government majority?</i>	House: <i>Yes</i> . Committee: <i>Yes</i> ; the proportion of committee members from each party mirrors each party's share of MPs in the Commons.	House: <i>No</i> . Committee: <i>No</i> ; any Peer may participate, so the government will not necessarily have a majority.
6	<i>Relative power of House</i>	Stronger: the Commons can 'force through' prospective legislation to become law after it has been delayed in two Parliamentary sessions by the Lords. However, the power of the Lords to delay policy for up to a year often compels government concessions.	Weaker: the Lords can delay policy for a maximum of two Parliamentary sessions before the Commons can 'force through' prospective legislation to become law. However, the power of the Lords to delay policy for up to a year enables them to put pressure on the government to make concessions.
7	<i>Oppositional dynamic</i>	More adversarial; divided along party lines.	More collaborative.
BILL-SPECIFIC			
8	<i>Amendments</i>	Few were discussed; the majority were filtered out – by not being <i>selected</i> or <i>called</i> .	Almost all were discussed, except where their content had already been covered.
9	<i>Specialisation</i>	<i>Moderate</i> . At the Immigration Bill's Committee: 18 out of 21 MPs had specialisation; the 'average MP' had around two sources of specialisation; a lack of first-hand and dedicated specialisation; and effective application of expertise was limited by time constraints.	<i>High</i> At the Immigration Bill's Committee and Report: 84 out of the 88 participating Peers had specialisation; the 'average Peer' had around eight sources of specialisation; more first-hand and dedicated specialisation than the Commons; the application of expertise was unhindered by time constraints.
10	<i>Non-Government legislative impact</i>	<i>Directly</i> , none. There may have been more <i>indirect</i> impact (see Chapter 12).	<i>Directly</i> , very little (two amendments). <i>Indirectly</i> , there was more impact than in the Commons (see Chapter 12).
11	<i>Quality of debate</i>	Lower; debate quality was diminished by (1) party-political point scoring; (2) strong incentive to toe the party line; (3) lack of applied specialisation; (4) MPs elected by popular vote, not personal achievement.	Higher; debate quality was enhanced by (1) less party-political point-scoring; (2) greater Peer independence; (3) expertise of members; (4) greater participation at Committee; (5) Peers appointed on personal achievement.

Backstage politics

The role of a Peer is partly that of an *advocate*. Although no Peer I spoke to used that term, it captures well their role as they described it to me. On this view, a Peer represents certain external interests, of landlords, students, and so forth. The same is true, in principle, of MPs, who must add their constituents to the list of those on whose behalf they advocate. But the institutional framework of the Lords, with its non-time-restricted debates, and near-zero amendment attrition, is more favourable to effective advocacy.

Throughout the scrutiny of the Bill, the Government was perpetually in a mode of ‘threat assessment’, by which it evaluated the risk posed to the provisions of its Bill by the positions, arguments, or amendments, of opposing Peers. In interviews, it was revealed that it is embarrassing for the Government to be defeated in a vote on an amendment. The purpose of the ‘threat assessment’ mode is to prevent such embarrassment.

By contrast, Peers opposing the Bill revealed being constantly on the lookout for the support of colleagues, or in the terms of POS, the cultivation of alliance structure. This orientation may be called a mode of ‘opportunity assessment’, by which opposing Peers remain alert to signals that colleagues will be sympathetic to their cause and support it at division. Peers attach great significance to collegiate support of their amendments.

This support has three modes of expression, suggested Parliamentarians interviewed, each of which conveys a different level of support. A Peer can indicate their support for an amendment by *voting for it* at division. A Peer may express stronger support by indicating their support of an amendment, including their intention to vote for it, in an *oral intervention*. In the hierarchy of amendment support, this is understandably more highly valued than a vote. Many more Peers vote than give speeches. Yet a Peer can indicate still stronger support for an amendment by *adding their name* to it. For a Peer trying to gather support for an amendment to a bill, this is comparatively difficult to achieve and hence relatively rare. For these reasons, the more Peers that add their name to an amendment, the greater the amendment’s political weight, or put differently, its embodiment of moral resources.

Similarly, there is a hierarchy of value not only in *how* colleagues support a Peer’s amendment, but *who* is supporting it – those actors which constitute their alliance structure. Most valued of all is the *support of the leadership of the Official Opposition*

– here, the Labour party. For the support of the Labour leadership usually entails the support of a much larger number of Labour Peers, compelled to follow their leaders through the activity of whips. The support of the Official Opposition is the *sine qua non* for amendment success. It is a necessary, though not sufficient, condition. Absent this support, there is “no prospect”, said one interviewee, of defeating the Government. For this reason, in interviews Peers spoke of “victories” and “coups” on winning the support – often not announced publicly but pledged privately backstage (and confirmable by voting data) – of the Labour Party.

Second most valuable is the *support of crossbench Peers*. The arguments, amendments, and actions of these Peers are generally viewed as resulting less from the demands of party politics and the instruction of whips than from reasoned policy critique, which is thought to be comparatively more objective, even-handed, and uncorrupted by ideology and partisanship. The crossbenchers are the next target because energy invested in convincing the crossbench is thought to be justified by their perceived independence, and hence openness and receptivity to argument. For the Immigration Bill, some Peers even met weekly with crossbench Peers to brief them on the development of their amendments.

Third most valuable is the support of *backbench rebels*: members of the Government parties – here the Conservatives and Liberal Democrats – who can be persuaded to depart from the party line. As one Peer interviewed suggested, in drafting an amendment, it is important to find a form of words acceptable to both the Labour Opposition *and* backbench rebels.

The lobbying of Peers may not, therefore, be said to be the preserve of external groups. *Peers are also lobbied by other Peers* (and more so than MPs are lobbied by their colleagues in the Commons).

As in the Commons, lobbying groups play an important backstage role. In the Lords, this role is even greater than in the Commons. There are more amendments to draft, and more Peers to brief. One lobbyist revealed the strategic importance of “touching base” with the Convenor of the Crossbench Peers, an individual elected by crossbenchers who is responsible for updating them on the business of the House. This office was occupied by Lord Laming at the time of this research, a social worker. In speaking with him, lobbyists were able to gauge the sentiment of crossbenchers, who, as we have said, are critical to amendment success in the Lords.

In this case study, on the frontstage, as in the Commons, the Lords Opposition sat across from the Government, and advanced critical arguments of its policies. Strong criticisms also came from the crossbenches, giving the impression of a Government under siege from all angles. This setup reflects the institutional design of Parliament; it has been built to be adversarial.

But that is not the whole picture. It belies the ways in which the Lords is more *collaborative* than the Commons. To see this, we must venture backstage. Here, Peers typically allow Government ministers prior sight of their queries, and it is widely held that defeating the Government by vote is not the preferred course. Partly, this is because any amendments to a bill must receive final approval in the Commons, where the Government has a majority, making non-executive amendment success unlikely. The resulting preference of Peers to “move by agreement”, in the words of one interviewee, that is, to encourage concessions through negotiation and compromise, gives the Lords a collegial character that is absent in the Commons. We will see this in the desire for non-Government Peers to bring amendment to the most controversial of the executive’s proposals: to endow the Home Secretary with the power to make a naturalised British citizen stateless.

The statelessness clause: frontstage and backstage

To bring the importance of Parliamentarians’ backstage negotiations into sharp relief, and *especially the importance of the combination of this action with forceful frontstage advocacy*, it will be helpful to focus our attention on the fate of one Bill clause in particular: the provision to enable the Home Secretary to deprive a naturalised British citizen of their citizenship, *even if that person would be made stateless as a result*.

Recall that this clause derived from the case of Hilal Al-Jedda, an Iraqi national suspected of involvement in terrorism, whose deprivation of citizenship by the Home Secretary had been ruled unlawful by the highest UK court because it rendered him stateless as a result. Theresa May wished to change the law to make such a deprivation lawful. This was by far the most contentious of all the Bill’s clauses, not least because, in the words of Labour Spokesperson Baroness Smith:

This clause was tabled just twenty-four hours before Report stage in the other place, with no prior consultation, let alone explanations or agreement, and a very truncated

debate. Parliament has had little opportunity to scrutinise this measure, which has massive consequences and implications both for the individual and for the state, and for other countries. (Hansard, 17 March 2014, col 41)

This clause was subject to the most impassioned and condemnatory of all arguments heard in the Lords. Baroness Kennedy of the Shaws (Lab), a barrister, described it as “disgraceful”, adding that she felt, “ashamed that we have sunk to this” (Hansard, 10 February 2014, col 485). But criticism was not confined to the Opposition. The Conservative Peer Lord Bourne criticised the clause on both principled and practical grounds, arguing that, “It seems neither fair nor effective. If they are in this country, there is nowhere we can legally deport them to if they are stateless” (Hansard, 10 February 2014, col 490).

Lord Bourne’s pragmatic argument referenced arguably one of the most important figures in the debate – an individual who was not even present. This was Guy Goodwin-Gill, a barrister, and Professor of International Refugee Law at the University of Oxford. Described by Peers as “an expert on this area” (Baroness Smith), and “eminent international lawyer” (Baroness Kennedy), he was referenced by name thirty times, mostly in speeches critical of the statelessness clause. Persistent was Goodwin-Gill’s argument that, under international law, the UK has no right to require any other state to accept those it has rendered stateless. Such countries would be entitled to return such individuals to the UK. And the UK would have to accept them (Goodwin-Gill, 2014).

Liberal Democrat Peer Lord Roberts of Llandudno reminded the House of the “judgment of Chief Justice Warren ruling in the United States Supreme Court case of *Trop v Dulles* in 1958”, who said that,

“use of denationalization as a punishment”,

means,

“the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture”.

But by far the most persistent and persuasive of Lords critics was crossbench Peer Lord Pannick QC, a judge and leading barrister, whom I interviewed for this research. Possessive of superlative powers of argument, Pannick is held in high esteem by

Parliamentary colleagues. If Pannick is critical of a provision, said his colleagues, Peers listen. More than any other actor, he was responsible for bringing, admittedly in his words, a “very substantial concession” on this most contentious of provisions. How did he achieve that?

He began with a strong public statement in the House of Lords chamber (Hansard, 17 March 2014, col 48):

My current view is that Clause 60 is so fundamentally flawed, so in breach of international law and so damaging in its practical consequences for the security of this country that it should be removed from the Bill. I am happy – and I am sure that noble Lords who have spoken and will speak in this debate are too – to meet the Minister in the short period of time before we return to this subject, as inevitably we will on Report this month, to see whether there is a possibility of making real progress on this very troubling matter.

Pannick was true to his word. He began his backstage activity by first getting a ‘feel’ for his fellow Lords’ positions on the issue. He spoke with a wide range of Peers: the Labour spokespeople, the crossbench, and potential rebels. He listened. Pannick then had a series of meetings with Lord Taylor, and a meeting in which were present both Taylor and the new Immigration Minister, James Brokenshire. Pannick also met the Bill team a handful of times, comprising five highly experienced civil servants, and discussed matters with Parliamentary draftsmen. On the basis of these backstage discussions, Pannick tabled Amendment 56, at the third (and final) sitting of the Lords Report stage, when opposition to the statelessness clause had reached its peak. It was tabled in the names of three additional Peers representing each of the three main parties: Baroness Smith of Basildon (Labour), Lord Macdonald of River Glaven (Liberal Democrats), and Lord Brown of Eaton-Under-Heywood (Conservatives). That the amendment displayed cross-party and crossbench (because of Pannick) support was important: it enhanced its political weight. It was a modest amendment: to establish a Joint Committee of both Houses of Parliament to consider all aspects of the Government’s proposal including its likely effects and report back – before the clause became law.

Pannick pushed his amendment to a vote. It was accepted by a substantial majority: 242 Contents to 180 Not Contents, on the back of, “considerable support from the crossbenches and a very substantial Liberal Democrat rebellion”, in the

words of one Peer. But any Lords amendments accepted would still need to be agreed to by the Commons, at a stage known as Ping Pong.

The amended Bill was ‘bounced’ to the Commons and debated there just eighteen hours after it received its Third Reading in the Lords. The Government disagreed with the amendment, with Brokenshire providing two arguments. The first was that such a committee, “would not have access to the appropriate closed material to make further assessments beyond what has already been discussed in the House.” The second was that the committee would, “cause unnecessary delay, leaving a loophole to be exploited and creating a barrier to effective action for a considerable number of months, if not years.” (Hansard, 7 May 2014, col 198)

The Government proposed two alternative amendments in its place. *Amendment (a)* limited the application of the deprivation power such that the Home Secretary could use it only if she had “reasonable grounds to believe that, under the laws of a country or territory, an individual is able to become a national of that country or territory”. *Amendment (b)* would implement an independent review mechanism of the clause, *after its implementation*, which would report to Parliament on the clause’s impact after one year and then on a triennial basis. This latter amendment, Pete Wishart likened, with characteristic humour, to “closing the stable door after the horse has left, without its passport, having been deprived of its citizenship. It is too late to do anything then.” (Hansard, 7 May 2014, col 207)

Labour presented some resistance to the Government, appealing to the democratic weight inherent in such strong Lords support for Pannick’s Amendment 56. They argued that the proposals:

do not have the support and confidence of both Houses. The removal of citizenship is such a challenging and extreme measure to take that it must have the confidence of both Houses of Parliament. (Hansard, 7 May 2014, col 204)

John McDonnell’s criticism was also of the procedural kind, and entailed an appeal to democratic norms, noting that the Government’s amendments had been debated in the Commons for just ninety minutes, while observing that in his seventeen years’ experience as an MP, “the worst civil liberties violations have occurred when the House has been bounced into urgent decisions. That is what is happening today and I resent that.” (Hansard, 7 May 2014, col 211)

The Commons voted against Pannick's amendment. It received 239 votes of support and 305 votes opposing it. In doing so, the Commons was taken to approve of the Government's Amendments (a) and (b) proposed to replace it.

Pannick had anticipated the defeat. The Government majority in the Commons made (and makes) victory there unlikely. In addition, success was made more improbable by a lack of Labour support. For that reason, even before the Commons vote had been cast, Pannick had continued his backstage negotiations with the Government, to find a form of words acceptable to both sides.

Thus, Government Amendments (a) and (b) were in fact drafted with Pannick's input. Apart from the likely defeat in the Commons, Pannick had also predicted subsequent defeat when the Bill was 'bounced' back to the Lords. He was unconvinced that an amendment vote could be won again, partly because Peers are reluctant to stand their ground against the elected house – they generally respect the legitimacy conferred to MPs by being elected to their Parliamentary position.

On being 'bounced' back to the Lords for their Ping Pong stage, Government Amendments (a) and (b) were relabelled as Amendments 18A and 18B, and incorporated into a single Government 'motion', "Motion B": that (1) the Lords do not insist on Pannick's amendment for a committee of both Houses to consider the ramifications of the policy *before* it becomes law, and (2) the Lords agree with the Commons amendments (on reasonableness and post-facto reviews).

Pannick announced to his colleagues in the House of Lords that he considered the concession of Amendment 18A "very substantial" because it "very substantially reduces the risk of leaving an individual stateless" (Hansard, 12 May 2014, col 1673).

An Opposition motion, Motion B1, was tabled by Labour Spokesperson Baroness Smith. It sought to reject the Government's Motion B, and reinstate Pannick's original amendment to create a committee of both Houses to consider the proposals in detail before they became law. Motion B1 had some support. Most notably, Lord Macdonald averred that (Hansard, 12 May 2014, col 1677):

The history of this matter is that it appears to have been conjured up to serve an entirely party-political purpose in the midst of a debate in the other place. It is illiberal, it is an affront to civilised international relations, it will not improve our security and, in all likelihood, it threatens a legal and diplomatic quagmire, to no useful purpose and to the detriment of the reputation of the United Kingdom.

Yet Motion B was rejected by the Lords by 286 votes to 193. In doing so, the House was taken to indicate agreement to the Government's Motion B, which rejected Pannick's original Amendment 56 and introduced Government Amendment 18A [formerly Amendment (a)], to ensure that the Secretary of State must have "reasonable grounds" for believing that the individual to be deprived of citizenship "is able to acquire another citizenship"; and Government Amendment 18B [formerly Amendment (b)], which responded, said Taylor, "to the request made by a number of noble Lords that there should be an independent review of the operation of the power", and which provided "for a review after the first 12 months following commencement and triennial reviews thereafter" (Hansard, 12 May 2014, col 1667).

A review of the voting data reveals that Pannick abstained. Given the merits of Opposition Motion B1 (which was, as Amendment 56, let us recall, an amendment that Pannick drafted), he did not want to vote against it. But nor could he vote for it in light of the Government's compromise.

Parliament as liberalist constraint

There were three other particularly notable non-Government successes, each constituting evidence for the liberal influence of the Lords. Lord Hannay and the education lobby were successful in their efforts to remove students from the landlord provisions. Government Amendment 29, added at Lords Report, sought to exempt students from the checks if they have been "nominated" by an educational institution. In commending the amendment to the House, Lord Taylor said (Hansard, 10 March 2014, col 1652):

We have listened carefully to the views expressed by Universities UK, the Russell Group and Universities Scotland that we have not got this exemption quite right, that it does not go far enough in covering the different circumstances in which higher education institutions arrange accommodation for their students. After careful further reflection, we have concluded that a broader exemption would be appropriate, to cover all accommodation that is owned, managed or arranged directly by higher education institutions.

Lord Avebury also succeeded in correcting an historical injustice in nationality law. In a telling remark at the sixth sitting of the Lords Committee, Avebury said (Hansard, 19 March 2014, col 182):

I never expect an amendment that I have drafted to be accepted on the spot by the Minister – that does not happen in real life – but the answer he has given [to go away and formulate an amendment for the Lords Report stage] is extremely satisfactory.

At Lords Third Reading, Avebury returned with two amendments, developed in collaboration with the Government. To honour Avebury's advocacy, the Government had agreed to allow him to formally table the amendments, which would then be accepted by the Government. Representing the only change to the Bill that was brought by non-Government amendments, it is worth examining in more detail.

In this study, the success of Lord Avebury's amendments constituted the only alteration to the Bill brought by non-Government amendment. This episode provides a fine illustration of the legislative importance of the Parliamentary-lobbyist alliance, and its mechanism of action. It will therefore be appropriate to take a short detour and examine more closely the history of this clause, which began with Alison Harvey of ILPA.

Harvey has a 'wish list' of measures she would like to become law. As usual, whenever an immigration bill is in Parliament, Harvey presents to MPs and peers some of these measures, in the form of amendments, gauging their enthusiasm to argue for them in their respective House. For the Immigration Bill, Harvey and ILPA wished to modify a minor immigration law, which, due to the idiosyncrasies of its development, led to a legal anomaly and unfair discrimination. According to this law, a person born abroad to a British father not married to their mother was entitled to register as a British citizen – unless they were born before 1 July 2006. This legal quirk arose because, in 2006, amendments to the 1981 Immigration Act enabled so-called 'illegitimate children' to inherit nationality from a British father in the same way as a 'legitimate' child. However, those amendments were not made retrospective, excluding from a route to citizenship 'illegitimate' individuals born before 2006.

Thus, ever since this law was passed on 1 July 2006, Harvey had wished to amend it via a simple provision. Harvey persuaded Julian Huppert in the Commons and Lord Avebury in the Lords to try to pass her 'illegitimacy amendment' onto the statute book. Thus, at the fifth sitting of the Commons Committee, Julian Huppert sought via his Amendment 34 to correct the "discrimination" inherent in the application of

the 2006 law (Hansard, 5 November 2013, col 176). Huppert's impassioned and forceful arguments were resumed by Avebury in the Lords. In backstage collaboration with the Government, Lord Avebury tabled at Lords Report Amendments 3 and 5, "to provide for registration as a British citizen for persons born before 1 July 2006 to a British father, where their parents were unmarried at the time of their birth." They were successful. In a rare act – and partly, it seems, to credit Avebury's advocacy – the Government, rather than tabling its own amendments, helped Avebury formulate his, such that they could accept them without vote. This exemplar of legislative influence illustrates, first, that it is consistent and co-ordinated pressure, across both Houses, that is key to securing Government concessions; and second, the legislative importance of the Parliamentary-lobbyist alliance, and its main mechanism of influence.

The Lords: chamber of responsibility?

What is it that brings Government concessions in the Lords? Interviewees suggested some combination of the following interrelated elements:

- (1) A strong case for modification of the prospective legislation.
- (2) The full backing of the Official Opposition.
- (3) Substantial crossbench support.
- (4) A minister who listens.
- (5) External groups that bring effective pressure.
- (6) Timing. A government might have a deadline by which they want to pass a policy, such as an election, and hence may prefer concession to delay.

In this chapter, we have seen how the House of Lords, the unelected upper chamber of the UK Parliament, is able to bring more change to Government policy than the House of Commons, the fully-elected lower chamber. We have also seen the ways in which the Houses of Parliament differ, on eleven dimensions, with the Lords providing a firmer check than the Commons on the will of the executive via a liberal influence of its legislative proposals. From one perspective, this might seem a counterintuitive finding, given that the Lords is not elected by the public, and not directly accountable to them. Yet, from another perspective, the Lords, being unelected, is better insulated from public restrictionism. In this sense, it functions

more like a national judiciary, exercising its functions with higher regard for responsible decision-making above responding to populist pressures.

Moreover, free of the strict time constraints present in the Commons, Lords debate entailed greater Parliamentary participation, in stages more favourable to effective deliberation. These debates also seemed better informed, comprising longer, more intellectually rigorous, and evidence-based speeches from Peers possessing much higher levels of specialisation than their Commons counterparts, and who, in their voting behaviour, appeared to vote less by party diktat than from personal conscience.

On the question of Parliamentarians' specialisation, we saw that the stage in the Commons most propitious to effective Bill scrutiny and change, the Committee, comprised Members whose specialisation tended to be second-hand and not based on a dedicated engagement with immigration. Furthermore, a minority of MPs actually took advantage of their specialisation by applying it to effective scrutiny of the Bill. A substantial majority of interventions and amendments came from a small number of MPs, with only a single MP from the ruling parties, Julian Huppert, offering comments of real critical value. As one interviewee noted, Commons MPs are "completely whipped". This seems less evidenced by the Lords.

Of additional significance is the number of amendments discussed in each House. In the Lords, more than four times as many amendments were discussed than in the Commons. For these reasons, the Lords could hold the Government to better account than the Commons, and, supported by the important work of expert external actors, was consequently, for all of these reasons, more effective in constraining the executive's manifest restrictionism.

Does this then mean that the House of Lords, as a political institution, displays higher 'viscosity' than the Commons, constituting a stronger check on executive power? On the basis of this research, the answer is yes, though not, it would seem, by much – if we are to consider *direct* indicators. After all, just a single change to the Bill was brought by non-Government amendment, that is, by Parliamentarians who are not the prime minister, cabinet ministers, and junior ministers. One might therefore suggest that although we have focused in this chapter upon the differences between the Houses, it is important not to lose sight of the core of the picture: a continued general resilience of the Government's proposals to Parliamentary challenge. With that said, in our next and final empirical chapter, we will follow the advice of Thompson and broaden our analysis, to consider whether the influence of the Houses of Parliament may be seen in *indirect* changes to the Bill: those which

whilst brought formally through Government amendment, were offered as concessions in response to the pressure of non-executive Parliamentarians.

12 The legislative impact of Parliament

The preceding empirical chapters have shown that the *direct* impact of Parliament was limited to a single change, brought in the House of Lords at its Third Reading stage by two amendments moved by the Liberal Democrat Peer Lord Avebury. In this chapter, I endeavour to demonstrate that a more detailed quantitative and qualitative analysis of each change reveals the *indirect* impact of Parliament.

I begin by providing an initial, quantitative indication of the extent to which the Immigration Bill was changed during its passage through Parliament. This is achieved by comparing the *enacted* legislation, the Immigration Act that received Royal Assent on 14 May 2014 after its consideration by Parliament, with the *proposed* legislation of the executive, the Immigration Bill that was introduced to Parliament on 22 October 2013. Note here that it is preferable to speak of *changes*, *alterations*, or *modifications* to the Bill rather than *amendments*, even though the latter is more common in the literature. This is because a clearly identifiable change to the Bill, such as the introduction of a new provision, could comprise multiple amendments, some of which may have been introduced by necessity to provide for consistency across the legislation.

Further questions will need to be asked. Was the Bill modified during its passage through Parliament, and if so, by whom? Was it the legislature or the executive? What was the direction and importance of these changes? Were they liberal or restrictive, major or minor?

Our case study legislation, the Immigration Bill 2013-14, is well suited to our investigation. This is because its first version, published 10 October 2013, was revealed by interviewees to have been almost entirely executive-authored. This meant that *before* the multi-stage Parliamentary process, there was minimal input from non-Government Parliamentarians. Initiated, envisioned, and drafted by the Coalition, specifically the Conservative part, the Bill can be expected to be a fair embodiment of that Government's vision for the country's immigration regime. We are therefore justified in limiting our analysis to the actions of Parliamentarians and their allies *during* the Bill's journey through the legislature, having eliminated the possibility of their behind-the-scenes impact before the Bill was published.

The Bill, even in its first version, was an extensive piece of legislation, running to 113 pages and totalling 40,000 words. It was also complex, being organised into seven “parts”, seventeen ‘sub-parts’ (my own label), and sixty-six “clauses”. These made up the first forty-nine pages of the Bill document. The remaining sixty-three pages detailed eight “schedules”, which described the provisions of the legislation in greater detail, and clarified how they were to work in practice. The Act itself was even longer, at 137 pages and 50,000 words. This was because its seven parts now contained twenty sub-parts and seventy-seven clauses, all capped off by nine schedules.

Method

For this analysis of Parliament’s legislative impact, I have adopted the core of the method employed by researchers at the Constitution Unit of University College London in their rigorous research of the legislative influence of the UK Parliament (Russell, 2010; Russell and Cowley, 2016; Russell *et al.*, 2016; Russell *et al.*, 2017). The Constitution Unit’s research was based upon a six-step process, the particular strengths of which are twofold. First, it deals with the full duration of the Westminster Parliamentary process. Second, it considers whether successful amendments brought by the government were nevertheless offered as concessions in response to Parliamentary pressure. As such, Russell and her colleagues have brought welcome improvement to studies that have measured legislative influence solely on the basis of policy outcomes and known party positions (e.g., Martin and Vanberg, 2005).

The analysis for this study applied the six-step process, as follows. The first step was simply to list each of the Immigration Bill’s main provisions. This included virtually all of the Bill’s clauses, yielding fifty-seven provisions.

The second step entailed placing each of these fifty-seven provisions into one of three categories: liberal, restrictive, or neutral. Each category was defined precisely. A *liberal* provision if passed into law would expand the freedom and individual rights of persons affected by it, with a particular focus on those most directly subject to immigration control: non-UK nationals and in some cases their family members⁵². So,

⁵² In classifying each provision as either liberal or restrictive, one may ask: with respect to whom? Immigration laws affect a wide range of individuals, not just immigrants or would-be immigrants. Sometimes, all of the people in a country, whether they are permanent residents, tourists, UK citizens, or non-UK citizens, will be affected. The analytic problem

for example, a provision that would abolish embarkation checks when people leave the country would be a liberal provision, as would creating new routes to citizenship, or introducing checks upon the power of immigration enforcement agencies. By contrast, provisions classed as *restrictive* in this analysis would, when passed into law, produce the obverse: a reduction in the freedom and individual rights of immigrants, that is, those attempting to stay in or enter the UK, or acquire British citizenship. Finally, a provision was deemed to be *neutral* if it could be expected to bring about neither an extension nor reduction in immigrants' rights. For example, the Bill's final provisions, which set out the commencement dates of its proposed measures and the countries of the UK to which they would apply, fall into this category.

It should perhaps go without saying that in labelling a provision "liberal" or "restrictive" my aims are analytical not normative. Hence, the placement of a provision in one or the other of these categories says nothing about that provision's fairness, reasonableness, evidence base, practicality, or merit; but rather only the direction of its proposed change to immigration law vis-à-vis its planned or likely effect upon the rights of immigrants, would-be immigrants, and their family members. In fact, deciding whether a provision was liberal, restrictive or neutral was straightforward. Not one provision was ambiguous or ambivalent.

The purpose of step three was to see whether the Bill was changed during its passage through Parliament. Thus the content of the Immigration Bill as introduced to Parliament on 22 October 2013 was compared with the content of the Immigration Act 2014 (c. 22) that received Royal Assent on 14 May 2014. In principle, all changes to the Bill can be classed as additions or deletions of text, or some combination of the

here is that a provision could be restrictive for some classes of individual, but liberal for others. For example, a provision that I class as restrictive – say, the reduction in rights of appeal against immigration decisions – whilst restrictive from the perspective of immigrant appellants could, from another perspective, be characterised as liberal. For example, from the perspective of native citizens, such a development could be argued to save much time, effort, and hence (taxpayers') money that would otherwise have been spent examining appeals in the courts. My perspective is that of immigrants, that is, non-British citizens, because these tend to be the explicit target of such reforms and are more actively and directly affected by immigration regimes. Defining restrictiveness and liberality in this way is the default approach in the literature and uncontentious (e.g., Timmer and Williamson, 1998). Nevertheless, although my aim has been to use the labels 'liberal' and 'restrictive' in an analytical, not normative, way, when using terms that carry as much political baggage as does 'liberal', conducting research that is to some degree normatively-laden may be an inescapable outcome.

two. In all, there were fifteen ways in which the text of the Act was different to that of the Bill, comprising thirteen additions, one deletion, and one that included a deletion and an addition.

The fourth step was to categorise each of these fifteen changes as liberal, restrictive, or neutral, following the same method as in step two, though with one modification. In that earlier step, when classifying the Bill's provisions, the frame of reference was *existing* immigration law. The question therefore asked was: would the provision in the Bill make immigration law more liberal or more restrictive *than it was at that time*, that is, when the Bill was published? In this fourth step, when categorising provisions in the Act that were not present in the Bill, I asked, in addition to that question: would this provision in the Act have made a *proposed* provision of the Bill more liberal or more restrictive? This modification in approach is necessary, because there may be cases where non-Government Parliamentarians liberalise a restrictive provision in the Bill, yet that provision is still restrictive *relative to existing immigration law*. Such restrictive provisions that have been 'liberalised' ought to be classed as liberal, which this alteration in method makes possible.

Of course, it is the nature of legislative provisions that they are not only binary in character, either liberal or restrictive. Rather, they are liberal or restrictive to different degrees and in different ways. This therefore brings us to our fifth step: the classification of amendments by *substantiveness*. As Russell *et al.* note (2016: 293), the classification of amendments by their substantiveness has been widely adopted in academic studies (the authors cite, for example, Kreppel, 1999; Tsebelis and Kalandrakis, 1999). This derives from the recognition that not all amendments are of equal significance. Some propose or make minor technical changes, while others entail substantive changes, of greater or lesser significance. For example, some restrictive changes, like the introduction of a power to enable the Home Secretary to render a person stateless, is by its very nature considerably more 'restrictive' than, say, allowing the Government to consider a slightly broader range of factors in setting fees for immigration services.

Russell *et al.* relate that differences in the substantiveness of bill changes "are explicitly recognised in the government's own internal classification of amendments" (2016: 293). This internal scheme has not been made public, but interviewees confirmed that it is used behind-the-scenes in Whitehall to determine which amendments require policy clearance from party leaders, a point corroborated by Russell *et al.*, (2016: 293).

In classifying the substantiveness of the Bill's changes, a four-point scale for coding amendments was deployed, building on a similar three-point scale of Shephard and Cairney (2005), and the Constitution Unit (e.g., 2016: 293-294), but adding a fourth category, *scope-changing* (Kreppel, 2002: 794). Both scales assess the legislative impact of each change by evaluating it according to increasing levels of substantiveness. These begin with *typographical or consequential* amendments that make only "cosmetic or lexical changes (e.g. renumbering, or correcting drafting errors) or provided consistency following other, more substantive amendments (e.g. adding references throughout the bill to a new clause or definition)" (Russell *et al.*, 2016: 293-294). The next category, *clarificatory*, comprises changes that seek to remove undesired vagueness or ambiguities in the text of a bill. These might seem as unimportant as the *typographical or consequential* category, but can be of some import given that much can rest on the interpretation of vague or loose legislation. Borrowing from Kreppel (2002: 794), the next most substantive category, *scope-changing*, refers to alterations that extend or limit the scope of an existing provision, such as adding additional exemptions. Finally, as with the three-point scale, the *most significant* kind of change includes alterations that would alter the effect of the legislation in a way that is *substantial*, such as adding a new provision (Kreppel, 2002: 794). Hence, the scale utilised for this study progresses in the following sequence: *typographical or consequential*; *clarificatory*; *scope-changing*; and finally *substantial*.

This brings us to the sixth and final step, which seeks to determine whether a change to the Bill represented a response to Parliamentary pressure, rather than being at the sole behest of the Coalition. Such changes are well known to researchers (e.g., Griffith, 1974) and Parliamentarians. A typical scenario is for a non-executive Parliamentarian to propose a change that the Government agrees should be incorporated into their legislation, but via the Government's own amendments tabled at a later stage. Such non-Government amendments would then be withdrawn following ministerial promises to table amendments to similar effect later in the Parliamentary process. Russell *et al.* (2016: 296-297) state that there are three main reasons for this phenomenon. The first is political: to avoid being seen to concede to the opposition. The other reasons are procedural. First, ministers require clearance, including from other departments, before accepting legislative changes; and second, they need to ensure that legislative drafting is technically correct.

The determination of whether a legislative change resulted from the influence of non-Government Parliamentarians required what Russell *et al.* call the analysis of *legislative strands* (2017: 7). This requires the granular triangulated analysis of three

elements: the *content* of changes to the Bill, to determine whether similar changes were proposed at an earlier stage; Parliamentary *discourse*, to see whether a minister suggested that Government changes were made as concessions to non-Government Parliamentarians; and the *'insider' accounts* of relevant actors, typically provided through interviews, to confirm or refute the inferences made on the basis of analysing the prior two elements. All three of the above elements were utilised in analysing the legislative strands of the Bill.

In addition, all changes to the Bill were coded with respect to two further variables: the Parliamentary stage in which the change was formally brought via amendment(s); and the formal source or 'sponsor' of the successful amendment(s), either the Government or non-executive Parliamentarians.

It was on the basis of this six-step analysis that the author was able to discern the liberalising or restrictionist impact of Parliament. Where a change satisfies both the conditions of being (1) liberal and (2) traceable to the pressure of Parliament rather than Government, we have evidence of *the legislature as liberalist constraint*.

Findings

The results of the first two steps in the analysis – listing each of the original Bill's main provisions, then coding them as liberal, restrictive, or neutral – demonstrate unambiguously that the Immigration Bill reflected a decidedly pro-restriction Government. When introduced to Parliament, it had fifty-seven main provisions, fifty-four of which were restrictive. The remaining three were neutral. Thus, we may calculate an overall *restrictiveness rating* of the Bill by dividing its number of restrictive provisions by the total of its provisions, excluding neutral provisions, and multiplying by one hundred. This gives a score of 100 per cent. The Immigration Bill, as introduced to Parliament by the executive, was *entirely* restrictive.

Turning to the findings of the third and fourth steps, compared with the Bill the Immigration Act contained fifteen significant changes, bringing its number of major provisions to seventy-two. Fifty-six of these provisions were restrictive, twelve liberal, and four neutral. This gives a substantially lower restrictiveness rating of 82.4 per cent. This is best explained by reference to the fifteen changes. Twelve were liberal, just two were restrictive, and one was neutral. This comparison of provisions between Act and Bill is summarised in Table J.

Table J The Immigration Bill and the Immigration Act: a comparison of provisions

Provision category	Immigration Bill (10.10.13)		Immigration Act 2014	
	<i>Count</i>	<i>Share</i>	<i>Count</i>	<i>Share</i>
<i>Liberal</i>	0	0%	12	16.7%
<i>Restrictive</i>	54	94.7%	56	77.8%
<i>Neutral</i>	3	5.3%	4	5.56%
<i>'Restrictiveness rating'</i>	100%		82.4%	
TOTAL	57	100%	72	100%

Note: the share is given as a percentage of all of the legislation's provisions, 57 for the Bill, 72 for the Act. These may not add to 100% due to rounding.

These results may seem persuasive as to the liberalising differences between Bill and Act, but one should not place too much stock in these figures, which capture only the *number* of provisions changed by Parliament, and their *direction*. Despite these reservations, the restrictiveness rating can be said to function as a reasonably useful and convenient indicator of immigration legislation's restrictiveness. In future research, it may enable quick and fruitful comparisons. However, this and the other figures say nothing about the more textured *nature* of the legislation. Some changes are of far greater moment than others. Some may restrict or liberalise the Bill to a far greater extent than do others. These aspects are considered in the more detailed analysis that follows.

First, let us first turn to the results of the fifth step in our method, which reveal the *substantiveness* of each of the fifteen changes made to the Bill during its Parliamentary passage. This reveals that eleven out of the fifteen changes were substantial; and that nine of these eleven were liberal. But how many substantial *liberal* changes resulted from Parliamentary pressure? This is, of course, the key question.

The final, most critical sixth step is an analysis of legislative strands, which will uncover how many Government changes responded to pressure from non-executive Parliamentarians rather than being at the Government's own behest. The findings suggest that of the fifteen changes brought to the Bill during its Parliamentary passage, ten of these changes could be traced to some form of Parliamentary pressure, and all ten of these changes were *liberalising*. This is in spite of the Government being

the sponsor of fourteen of these fifteen changes. Moreover, both of the two restrictive changes appear to have been solely Government initiatives.

We therefore have persuasive evidence of Parliament as *liberalist constraint*. Furthermore, of the ten changes that evidence the UK legislature as liberalist constraint, seven were *substantial* in their effect; two were *scope-changing*, both narrowing the scope of restrictive provisions; and one was *clarificatory*. These findings are shown in Table K, with the changes to the Bill listed in the order in which they appear in the Immigration Act.

These findings invite two caveats. First, we cannot say that the changes traceable to Parliament resulted *solely* from its pressure, as “it often provides the forum to negotiate changes *that have been called for by others*” (Russell *et al.*, 2016: 297; my emphasis), such as the media and interest groups. Second, and more importantly, perhaps, although the painstaking amendment analysis developed at the Constitution Unit sheds valuable light on Parliament’s impact upon legislation, its creators caution that it may still fail to illuminate much of that influence, due to what has been called the “rule of anticipated reactions” (Russell *et al.*, 2016: 289-290). As Russell *et al.* remark (2016: 289), “Legislative studies scholars have long emphasised that the ‘reactive’ influence of parliaments can be less important than their ‘preventive’ influence”, as executive decision-makers anticipate the legislature’s likely reaction to proposals, and adjust them accordingly in advance of submitting them to the legislature. Studies of the European Parliament have confirmed the presence of this dynamic (e.g., Häge and Kaeding, 2007). Regrettably, this was not a subject of discussion with the few members of the executive interviewed for this study. However, it is fair to observe that, as Russell *et al.* suggest, any such research will be likely to *underestimate* Parliament’s influence (2016: 290, my emphasis).

Table K The fifteen changes to the Immigration Bill: results of the six-step analysis

	Details of the change <i>with comments</i>	Direction	Substantiveness	Traceable to Parliamentary pressure?
1	<p><i>Deleted</i> provision via Government amendment(s) at Lords Third Reading, though first raised by non-Government Parliamentarians at Commons Committee:</p> <p>To provide a power for the Secretary of State to make regulations regarding the removal of family members (subject to the negative resolution procedure).</p> <p><i>Before its deletion, this provision granted the Government, specifically the Home Secretary, the power to produce secondary legislation specifying four procedural details related to the deportation of immigrants: who is a family member of an immigrant to be deported; the period within which such a family member may be deported; whether the family member is to be given notice of their deportation; and how (e.g., by letter). The deletion removed the delegation of the power to define a family member for the purpose of deportation and also limited the power to make regulations about the removal of family members to the period within which a family member may be deported, and whether the family member is to be given notice of their deportation.</i></p>	Liberal	Substantial	✓
2	<p><i>Addition</i> via Government amendment(s) at Lords Committee, though first raised by non-Government Parliamentarians at Commons Committee:</p> <p>Limits the detention of an unaccompanied child in a short-term holding facility to a maximum period of 24 hours, either where directions are in force requiring the child's removal from the UK, or a decision on whether to give directions is considered likely to result in such directions.</p>	Liberal	Substantial	✓
3	<p><i>Addition</i> via Government amendment(s) at Lords Committee, though first raised by non-Government Parliamentarians at Commons Committee:</p> <p>Provides a separate legal basis for “pre-departure accommodation” as a place used solely for the detention of children and their families for a period of not more than 72 hours, or not more than seven days in cases</p>	Liberal	Substantial	✓

Table K The fifteen changes to the Immigration Bill: results of the six-step analysis

	Details of the change <i>with comments</i>	Direction	Substantiveness	Traceable to Parliamentary pressure?
	where the longer period is authorised personally by a Minister of the Crown. The Act makes clear that a short-term holding facility is not pre-departure accommodation.			
4	<i>Addition</i> via Government amendment(s) at Lords Committee, though first raised by non-Government Parliamentarians at Commons Committee:	Liberal	Substantial	✓
	Prevents a child and their parent or carer living with them from being removed from, or required to leave, the UK for a period of 28 days after the family has exhausted any right of appeal.			
5	<i>Addition</i> via Government amendment(s) at Lords Committee; appears to be the Government's sole initiative :	Liberal	Substantial	✗
	Establishes the Independent Family Returns Panel as a statutory body (it had previously existed as a non-statutory body), and places a requirement on the Secretary of State to consult the Panel in each family returns case on how best to safeguard and promote the welfare of children in the family.			
6	<i>Addition</i> via Government amendment(s) : at Lords Report, though first raised by non-Government Parliamentarians at Commons Committee	Liberal	Substantial	✓
	Requires the Secretary of State to commission a report from the Independent Chief Inspector of Borders and Immigration on administrative review within a period of 12 months from when section 15 of the Act comes into force. This is to address in particular the effectiveness of administrative review in identifying and correcting case working errors and the independence of persons conducting the administrative review. The Chief Inspector must send the report to the Secretary of State and the Secretary of State must lay a copy before Parliament.			
7	<i>Addition</i> via Government amendment(s) at Commons Committee; appears to be the Government's sole initiative (highlighted in boldface):	Restrictive	Substantial	✗

Table K The fifteen changes to the Immigration Bill: results of the six-step analysis

	Details of the change <i>with comments</i>	Direction	Substantiveness	Traceable to Parliamentary pressure?
	<p>Enables the Home Office to deport foreign criminals and those whose presence in the UK is non-conducive to the public good, who are appealing to stay in the UK on human rights grounds, <i>before the appeal has been determined</i>, unless they face a “real risk of serious irreversible harm” if deported.</p> <p><i>This change expanded the Government’s powers such that the Government would be able to deport not only “foreign criminals” appealing to stay in the UK on human rights grounds (as was initially proposed by the Bill), but also others whose deportation is deemed by the Home Secretary to be “conducive to the public good”. This change therefore broadened the class of persons subject to the ‘deport first, appeal later’ power under the Act. For that reason, this change could be viewed as scope-changing, but because it could substantially broaden the scope of the power, it has been classified it as being substantial.</i></p>			
8	<p>Addition via Government amendment(s) at Commons Report Committee, though first raised by non-Government Parliamentarians at Commons Committee:</p> <p>Added refugees to the list of property categories that would be exempt from the landlord immigration checks.</p>	Liberal	Scope-changing	✓
9	<p>Addition via Government amendment(s) at Lords Report, though raised by non-Government Parliamentarians at Commons Second Reading and Committee:</p> <p>Added a further exemption to the landlord immigration checks: residential tenancy agreements where a student has been nominated to occupy it by an educational institution.</p>	Liberal	Scope-changing	✓
10	<p>Addition via Government amendment(s) at Commons Committee; appears to be the Government’s sole initiative:</p>	Liberal	Substantial	✗

Table K The fifteen changes to the Immigration Bill: results of the six-step analysis

	Details of the change <i>with comments</i>	Direction	Substantiveness	Traceable to Parliamentary pressure?
11	<p>Enables the remit of the Police Ombudsman for Northern Ireland to be expanded to provide for the oversight of certain persons exercising specified enforcement functions in relation to immigration, asylum and customs matters in the Home Office.</p> <p><i>Addition via non-Government amendment(s) at Lords Third Reading, and first raised by non-Government Parliamentarians at Commons Committee:</i></p>	Liberal	Substantial	✓
12	<p>Enables certain adults, notably those who were born abroad before 1 July 2006 to a British father who was not married to their mother at the time of their birth, to register as British citizens. Such persons include those who would have become British automatically had their parents been married at the time of their birth and those who would currently have an entitlement to registration but for the fact that their parents were not married at the time of their birth.</p> <p><i>Addition via Government amendment(s) at Commons Report; appears to be the Government's sole initiative:</i></p> <p>Enables the Secretary of State to deprive a person of their British citizenship status – regardless of whether or not it will render them stateless – if all of the following apply: (1) the person has acquired citizenship as a result of naturalisation; (2) the person has conducted themselves in a manner seriously prejudicial to the vital interests of the United Kingdom.</p>	Restrictive	Substantial	✗
13	<p><i>Addition via Government amendment(s) at Lords Ping Pong, though first raised by non-Government Parliamentarians at Lords Second Reading:</i></p> <p>The Secretary of State can deprive a person of their citizenship under provision 12, above, only if the following condition is satisfied: the Secretary of State has reasonable grounds to believe that the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory if their citizenship is so deprived.</p>	Liberal	Substantial	✓

The legislative impact of Parliament

Table K The fifteen changes to the Immigration Bill: results of the six-step analysis

	Details of the change <i>with comments</i>	Direction	Substantiveness	Traceable to Parliamentary pressure?
14	<p><i>Addition</i> via Government amendment(s) at Lords Report, though first raised by non-Government Parliamentarians at Lords Second Reading:</p> <p>Duty regarding the welfare of children: For the avoidance of doubt, this Act does not limit any duty imposed on the Secretary of State or any other person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children).</p>	Liberal	Clarificatory	✓
15	<p><i>Addition and deletion</i> via Government amendment(s) in the post-legislative pre-Royal Assent phase:</p> <p>Provides that the Act applies to England and Wales, Scotland, and Northern Ireland, apart from Section 59 and Schedule 6, which apply to England and Wales only.</p> <p><i>The words in boldface reflect a technical change to the Immigration Bill. In the first version of the Bill (published 10 October 2013) they read “Section 53 and Schedule 5”. These designations were updated for the Immigration Act 2014 to reflect the new places of that section and schedule in the legislation.</i></p>	Neutral	Typographical or consequential	✗
Summary	<p>Changes via Government amendment(s): 14, of which 10 are traceable to non-Government Parliamentary pressure</p> <p>Changes via non-Government amendment(s): 1</p>	<p>Liberal: 12 Restrictive: 2 Neutral: 1</p>	<p>Substantial: 11 Scope-changing: 2 Clarificatory: 1 Typographical or consequential: 1</p>	<p>Traceable to non-Gov. Parliamentary pressure: 10 (10 liberal, of which 7 substantial, 2 scope-changing, 1 clarificatory)</p>

Table K The fifteen changes to the Immigration Bill: results of the six-step analysis

Details of the change <i>with comments</i>	Direction	Substantiveness	Traceable to Parliamentary pressure?
			Sole Gov. initiative: 5 (2 liberal, 3 restrictive, of which 4 substantial, 1 typographical or consequential)

13 The legislature: the other liberalist constraint

With this enquiry, I have sought to contribute to an understanding of the role of the national legislature in shaping the immigration law of liberal democratic states. My case has been the United Kingdom, with a focus upon a single set of proposals for reform: those of the Immigration Bill 2013-14, which culminated in the Immigration Act 2014. I framed this investigation in relation to the central preoccupation of researchers of immigration politics, namely the striking and near-universal ‘gap’ within Western nations between mass immigration and popular calls for immigration restriction.

Responses to this vexing puzzle fall broadly into three camps. The first assumes that governments seek to reflect popular preferences for immigration restriction, but that they fail in their efforts, due to one or the other of the following reasons, or some combination of the two: first, there is a problem with the *implementation* of their measures to control immigration; and second, migration pressures are simply too great and liable to overwhelm even perfectly-implemented immigration laws. By contrast, the second approach posits that governments have in fact cultivated – not always openly – an *expansionary* approach to immigration. Any gap between public opinion and immigration patterns is thus not the result of states having ‘lost control’, as the first kind of argument posits, but is entirely consistent with their liberal objectives (Freeman, 1995a). The third approach is like the first in that it also assumes that governments are not ignoring their citizens, and generally try to honour the popular bent towards restrictionism. However, policy-makers are frustrated in their efforts by institutions and norms characteristic of liberal democracies: national judiciaries, international human rights norms, state bureaucracies, global capitalism, and supranational institutions. My approach fits into this third camp due to its consideration of whether that other core feature of the liberal state, the national legislature, might also constitute a source to liberalise immigration law, thereby contributing to the existence or widening of the ‘gap’.

My principal objective has therefore been to uncover the precise nature of Parliament’s influence upon the proposals of the executive – the Coalition – and hence determine the importance of Parliament, as an institution, in British immigration law-making. That objective revolved around a linchpin question of whether the UK legislature delimited the scope of the Coalition Government’s conspicuous restrictionism, thereby acting as a liberalist constraint. If we accept the United Kingdom as a ‘most-likely’ case

for having a pusillanimous and restrictionist legislature, and the evidence were to demonstrate that its Parliament did indeed act as an important liberalist constraint in the legislative development of the Bill, then we are able to draw inferences about the importance and bent of other national legislatures in immigration law-making. Put simply, if the UK has a legislature that acts as a liberalist constraint upon a restrictionist executive, then it is more likely that other national legislatures, which are argued to be more powerful and liberal than the British Parliament, will also act in this way.

The findings that respond directly to these issues will be presented and explained presently. This conclusion begins, however, by describing the initial drafting process of the Bill. This speaks to a number of central debates in the literature, and also reveals a notable lack of Parliamentary impact in this pre-legislative phase. After this, we will turn to a detailed explanatory account of the Bill's passage through both Houses of Parliament.

The initial drafting of the Bill

The Immigration Bill was shaped predominantly from within the Home Office, the ministerial department of the British government responsible for law and order, security, and immigration. There, the Bill was made by an institutional-political elite mostly comprising Government ministers, senior civil servants, and special advisors. These actors were largely insulated from the outside influence of other actors, including non-executive Parliamentarians, although interviewees suggested that the Government (specifically, the Conservative part of the Coalition) was influenced by its leaders' perceptions of voter opinion and of national newspapers. The latter were seen as being instrumental in swaying voters' attitudes towards immigration and hence electoral behaviour.

The impact of the populist press is thought to apply especially to actors within the Home Office because it is the dominant domestic affairs department, responsible for the control of activities considered socially harmful, including terrorism and crime (Consterdine, 2015b: 133). Such issues strike 'closer to home', both in the more literal geographic sense and because they are more emotionally resonant (as the POS framework of Koopmans and Statham would predict). For this reason, the Home Office attracts far more public interest than other departments, and hence, far more attention in the populist press.

Interviewees, from both within and outside Government, were almost unanimous in their view that Theresa May, in her role as Home Secretary, was the main driver of the

Bill. However, the policy was also a multi-departmental project, with input from those departments with a particular interest in immigration law, notably: the Department of Health; the Department for Business, Innovation and Skills; and to a lesser extent Her Majesty's Treasury, and the Ministry of Justice. I have not been able to explore in any depth this multi-departmental aspect of policy development, but I have seen enough to suggest that it is worthy of the greater attention that researchers have argued it deserves (Hampshire and Bale, 2014; Consterdine, 2015b).

The bulk of the Bill was drafted *backstage* and so out of public view. Although I was not party to the activities behind the scenes, where the Bill's provisions were brainstormed and designed, and in which they received their precise formulation, those who met with the Government at that time, as well as other interviewees, provided an outline of the process. They revealed that only a handful of individuals was involved, and that the Liberal Democrats had negotiated, as the Coalition's "junior partner", from a position of relative weakness in a policy area designated by the Conservatives as so important as to be 'non-negotiable'. Here was a "red line" policy, revealed several interviewees, from across the political divide, on which they would not budge as part of a deal.

From my investigation, I learned that the authorities most responsible for the nature of the Bill – Home Office ministers – were both reactive and creative with regard to policy. They were reactive in being sensitive to public attitudes and newspaper reportage on immigration. They were creative in the sense that they were the principals who formulated the legislation. They were not, as some scholars have suggested (Freeman, 1995a, 1995b), essentially passive actors pushed about by external forces such as lobbying groups. Rather, Home Office ministers actively generated and championed certain issues and policy proposals. Moreover, this was not an atypical policy in this regard. Interviewees spoke in a way that revealed that they took for granted this exercise of power by government ministers.

After initiating and designing the proposals that would later become the laws of the Immigration Act, these ministers – with the superior human resources possessed by the executive arm of government – then defended their proposals in Parliament. They did so with notable success, their original proposals being subject to moderate change by the Parliamentary process. In this particular case, this was in no small part due to the decision by the leadership of the Labour Party and Liberal Democrats not to oppose the Bill and its measures in Parliament. For Labour, said interviewees, this appears not to have been because they thought the Bill was good policy. Rather, it was because they believed that opposing it would be too unpopular with voters. As for the Liberal Democrats, in private

they opposed the Bill strongly, and backstage were effective in removing some of its more illiberal aspects, such as immigration checks within schools. However, their ability to oppose the Bill publicly and in Parliament was limited by their position as a minority Coalition partner and their prioritisation of other issues. As one interviewee said, their “hands were tied”: as Coalition partner, they occupied a position of relative weakness; had expended what political capital they had to ‘soften’ or remove some of the Bill’s ‘toughest’ components; and were “wary of being seen to throw stones”.

Enter Parliament: describing its legislative impact

Yet the Bill *was* changed by the UK’s legislature, and in ways that were far more substantial than an engagement with the research literature would lead us to expect. This is because to ascertain the true nature of Parliament’s legislative influence requires that the analyst deploy a far more granular analysis than is implied by a focus upon what we may term *direct* legislative impact – an analytic tendency of earlier research (e.g., Martin and Vanberg, 2005). An analysis that examines only this form of influence would be based on *formal amendment data*, as is found in Hansard, the official record of Parliamentary proceedings. These data have three aspects relevant to the determination of *direct* impact: (1) the *sponsor* of each amendment, that is, whether the Parliamentarian or Parliamentarians that moved it are members of the Government or not; (2) the *outcome* of each amendment, that is, its success or failure, which refers to whether or not it was incorporated into the Bill; and (3) the House in which successful amendments were brought, whether the Commons or the Lords.

In the case of the Immigration Bill, a survey of just these amendment data provides a clear but ultimately misleading impression of Parliament’s influence, critically underestimating it. It would reveal that across both Houses just two non-Government amendments were successful, with these brought in the Lords – thereby implying zero legislative influence for the Commons, and very limited impact for the Lords. However, a comparison of the provisions contained within the Immigration Bill and Act reveals a very different picture: that fifteen changes were brought to the Bill during its Parliamentary passage. The analysis of direct legislative influence would attribute all but one of these changes to the executive (those resulting from the amendments tabled by the non-Government Parliamentarian, Lord Avebury). But that would be in error, as a more granular analysis of *legislative strands* shows, producing evidence to suggest that *nine* further changes, which resulted from Government-sponsored amendments, were offered

as Government concessions, in response to Parliamentary pressure. This means that in total, ten changes to the Bill may be traced, at least in part, to Parliamentary pressure, rather than being solely at the initiative of the Government – affecting around fourteen per cent of the legislation as a share of its clauses.

This is no trivial proportion. Moreover, each of these ten changes was *liberal* in orientation, either softening the Bill's solely restrictive provisions or introducing fresh measures to safeguard or extend immigrants' rights. Even from this rough and impressionistic indicator, we are justified in concluding that the UK legislature constituted a *liberalist constraint* upon executive restrictionism.

But how strong a constraint? Our metric says nothing about the more complex, nuanced qualitative *nature* of those eleven liberal changes. In the main, these cannot be described as being of *major or critical* import, as these terms are intuitively understood. In fact, in the terms of my framework, most were *substantial* in their content – seven in total – while two were *scope-changing*, broadening the reach of liberal exemptions to restrictive provisions. This evidences Parliamentary impact far in excess of what one would expect from a legislature described as “a legislature on its knees” (Huhne, 2009; cited in Russell *et al.*, 2016: 286), and “an elaborate rubber stamp” (Macdonald, 2009; cited in Russell *et al.*, 2016: 286).

In any case, even those changes which liberalised existing Bill provisions in less important, scope-changing ways may be substantial in their social impact, in that they apply to a nation of sixty-five million residents. That would appear to apply to both of the Bill's non-Government liberal changes that alter the scope of provisions. Secondly, beyond their social implications, these impacts also have a broader political significance. They suggest that the power of the UK's executive, which has argued to have increased markedly over the past twenty years, especially under the premiership of Tony Blair (Casey, 2009), appears to be far from total.

These changes were brought about in substantial part by the most important (non-Government) actor in immigration law-making, adjudged by legislative impact in *this* study: non-Government Parliamentarians in the *House of Lords*. Thus, this group of actors, non-Government Peers, were the principal agent of change for this particular Bill. The findings of this study revealed that the legislative influence of Peers derived primarily from their *collaboration* with expert external actors, who were almost all representatives of lobbying groups. Exchanges were conducted mostly via email, and over the course of the Bill's development these could range from dozens to hundreds between individuals. Less quantifiable, but just as important, were Peers' telephone conversations and face-to-face meetings with outside experts and lobbyists.

Lobbying organisations were of two kinds: *interest groups*, such as the Residential Landlords Association (RLA), and *promotional groups*, such as Liberty. Interest groups are defined by their ability, or claim, to represent the interests of a particular category of person, such as landlords in the case of the RLA. By contrast, promotional groups endeavour to promote a particular cause, such as civil liberties and in the case of Liberty. However, not all lobbying groups fit neatly into one or the other of these categories. Most notably, the Immigration Law Practitioners' Association (ILPA) combines features of both, representing the interests of its members, mostly immigration lawyers, whilst also defending migrant welfare.

These external actors provided Peers with expert guidance in the scrutiny of the Bill, and assisted them in drafting amendments or drafted them in their entirety. ILPA was a particularly important external actor in this regard. Alison Harvey, its Policy Director, co-ordinated the scrutiny of lobbying groups, and provided the Bill's critics, both inside and outside Parliament, with her expert legal evaluation of the Government's proposals. In so doing, she helped to level a field that was markedly uneven in the distribution of human, and especially intellectual, resources between the Government and Opposition 'challengers'.

I therefore accredit lobbyists with a less consequential role in immigration law-making than does Freeman, who has argued that they are the principal force in shaping immigration policy- and law-making in liberal democratic states (1995a, 1995b 2006b). In observing that external actors influence policy primarily through their relationship with Parliamentarians, notably Peers, this study assigns lobbyists a *dual role* that has not been recognised in other studies, which have tended to consider only lobbyists' *direct* impact upon Government actors (e.g., Hampshire and Bale, 2014). By contrast, this study assigns far greater importance to lobbyists' *indirect* influence throughout the Parliamentary process via their symbiotic relationship with Parliamentarians and especially Peers. Lobbyists rely upon MPs and Peers for public advocacy: to argue and struggle on their behalf in the legislature in furtherance of these lobbyists' interest. At the same time, Parliamentarians rely upon lobbyists to assist them in their legislative scrutiny, much of which requires highly specialist expertise.

This speaks to arguments that locate the liberalist constraint in civil society groups and their struggles for rights. The persuasiveness of such arguments depends, observes Boswell (2007: 80-81), upon their adequate explanation of not only the *mobilisation* of societal groups, which is commonly accounted for by a struggle for justice and rights extension in contexts of social upheaval (Tilly, 1975; Giddens, 1985; Mann, 1995; cited in Boswell, 2007: 81); but also the more difficult question of what motivates *governments*

to respond to such mobilisation. Why should they heed the efforts of these ‘challengers’, which would appear to have no formal power over government elites?

Historically, states have periodically extended rights to marginalised groups “in order to shore up legitimacy” (Boswell, 2007: 81). To this second question, the present enquiry points to another reason, which is that civil society groups operate *through the legislature*, via Parliamentarians sympathetic to their cause, who, in championing that cause in Parliament, compel governments to make concessions, for the same basic reason that any British government makes legislative concessions in Parliament: to prevent the Lords obstructing the Parliamentary passage of their legislative proposals and delaying, by up to two years, their enactment.

Explaining Parliament’s impact

In the *House of Commons*, the Government may be seen to have displayed a conspicuous lack of receptiveness to the criticisms of MPs and those of expert witnesses at the Public Bill Committee. This apparent obstinacy was facilitated by three institutional factors, which combined to ensure that the Government’s proposed legislation left the House of Commons without a single non-Government amendment:

(1) *The majoritarian ‘first-past-the-post’ electoral system*

This meant that the ruling parties of the Coalition government had a majority in Parliament

(2) *The institutional design of Parliament*

Since the Government’s proposed legislation could be amended only by majority vote, this Government was able to outvote non-Government amendments.

(3) *Party discipline*

This was enforced by strong party whips, compelling most MPs to toe the party line.

In this case study, the Government’s ability to enact a Bill that was substantially similar to its initiating legislation was eased considerably by the Labour Party’s refusal to vote against it. Added to this, there was little appetite for rebellion amongst Government backbench MPs. This meant that the Coalition’s majority in the Commons translated consistently into majority votes. The same conditions may be seen to apply in the subsequent *Public Bill Committee*, where there was always a Government majority

because the number of Members from each party reflects their proportions in the Commons.

In the *House of Lords* the situation proved to be quite different. Peers were more independent, more expert, and conducted a more robust scrutiny than did their Commons counterparts. Also significant was the presence in the upper chamber of a substantial complement of crossbench Peers, who do not have a formal party affiliation. In the words of one of the Peers interviewed, this meant that, “argument had an effect” to a considerably greater extent than was seen in the “other place”.

Subject to no substantial limits on time, unlike those in the Commons, deliberations in the Lords were more extensive. Peers discussed over four times as many amendments as did MPs, being generally able to give each amendment its due attention. This contrasted with the high levels of amendment attrition exhibited by the lower House, which proved notably detrimental to the scrutiny carried out by its Members. Furthermore, the Government was held more firmly to account at each of the Bill’s stages, from Second Reading through to Ping Pong. This was possible because the Government did not then – and does not now – enjoy a majority in the Lords. Additionally, it faced a substantial complement of more independent crossbench Peers, who profess no party affiliation. Consequently, its proposals were subjected to greater pressure, which ultimately compelled it to give ground and, through concessions, to liberalise its largely illiberal Bill.

All but one of the ten liberal changes traceable to Parliamentary advocacy was brought formally in the Lords, but we would be wrong to conclude that MPs had no hand in them. In fact, nine were first raised as issues in Commons debates; and Peers revealed that this initial scrutiny proved to be a useful foundation for their own. From this, following Thompson (2015b), we ought not to presume that the role of MPs, especially Members of the Commons Committee, would be of very much less significance than that of Peers, despite first appearances.

It was clear from this study that Parliamentarians, mostly Peers, working collaboratively with external actors, *actively championed* and *generated* new immigration law. In this sense, to describe legislators as merely a constraint would fail to capture the full extent of their activity and influence with respect to the Immigration Bill. The British legislature did not act only as a check upon executive restrictionism, as implied by the term ‘constraint’. It did not function solely as a bulwark against immigration restriction. Rather, it constituted a wellspring of new legislative proposals to protect or enhance immigrants’ rights.

Ultimately, then, the UK Parliament did not serve as a neutral arena for the activities of political parties, MPs, or Peers. It is not a mere debating space. Nor does it function passively. But that is mainly due to the nature of the upper house. “The House of Commons is still more of an arena than a transformative legislature”, as King puts it (2009: 348).

However, as is well known, the House of Commons ‘dominates’ the House of Lords. The latter can delay legislation through its continual amendment or its outright rejection, though for a maximum of only two Parliamentary sessions (i.e., about two years). Thereafter, the Commons can ‘force through’ prospective legislation for it to become law. In the case of the Immigration Bill, the Government was keen for it to be enacted in time for the elections to the European Parliament in May 2014. It was this time frame that saw the Government makes concessions in response to the Lords’ proposed amendments to the Bill. However, in this study, Peers then explained the reluctance of the Lords to vote for further amendments to the Bill at Lords Ping Pong or to reject the Bill outright. This, they said, reflected a long-standing and fundamental respect for the democratic legitimacy inherent to the fully-elected lower chamber. There is no formal rule forbidding Peer intransigence, so this general unwillingness to remain defiant against the executive is better understood as a Parliamentary convention. In relation to our POS explanatory framework, therefore, this would equate to the more informal dimension.

In this study, the extent of Parliament’s legislative impact – and its principal source, Peers rather than MPs – was not regarded as unusual by interviewees. On the contrary, they suggested it was fairly typical. It would indeed be interesting in future research to ask how accurate is their judgement, and hence whether we are justified in using Parliament’s impact upon the Immigration Bill as a valid indicator of the UK legislature’s general capacity to influence legislation.

The Lords: a quasi-judicial institution?

To be able to justify this characterisation of the House of Lords, we will first need to consider the two central competing principles that guide political decision-making in liberal democracies and will inform our discussion. These principles derive from the long-standing distinction in the analysis of British politics between *representative* and *responsible* government. It was Birch’s early contribution, *Representative and Responsible Government* (1964), that set the stage for an abundance of critical writings from the eighties onwards on the failure of the British political system to provide either

representative or responsible government (Gamble, 1990: 416). In these and later discussions, government decisions were viewed as broadly ‘representative’ when they reflected the interest and opinions of the public. Today, the word *responsive* is often used in place of ‘representative’, which has a variety of meanings in political analysis and is not in need of any more. This is why the more contemporary usage is adopted here.

The term ‘responsible’ has been subject to many detailed and overlapping formulations, but in essence this adjective applies to when political decision-makers do not react only to immediate pressures, but pursue longer-term national interests, or what is considered morally right, even where a majority of the voting public would prefer otherwise. This kind of responsibility has elsewhere been termed “prudence” (Dunn, 1991).

“Almost everyone”, says Birch, “would agree that policy makers have a duty to take account of enlightened opinions and long-term interests as well as to respond to the immediate demands that are put to them” (1971: 112). The difficulty facing politicians is, of course, in knowing where to opt for one over the other. When ought they to disregard the demands of their constituency or the citizenry in favour of what is deemed to be the more responsible course? Sometimes, political leaders must take decisions that are unpopular.

Thus, for the politician, the principles of responsiveness and responsibility are often in conflict. Perhaps the classic illustration of this was the abolition in the UK of the death penalty. That was a Parliamentary decision that did not have public support, and were there to be a vote today, polls suggest that the electorate would probably choose to reinstate capital punishment (Knowles, 2015: 5-6). Yet abolition was achieved in 1965, due to the acceptance by a majority of MPs “that the state just ought not to be in the business of taking human life” (Knowles, 2015: 5).

The conflict between these opposing principles of political decision-making are doubtless exacerbated by there being multiple sources to which a policy-maker may respond, such that views of constituents might be at odds with the interests and preferences of the national electorate. Similarly, there are multiple criteria and competing standards for determining which courses of action are more or less responsible, such as an interpretation of the immediate public interest; longer-term national goals; procedural principles of ministerial office; party political considerations; or personal conscience.

In truth, this is an age-old problem. It is captured in Dahl’s distinction between *populist* and *Madisonian* democracy (Dahl, 1956), as well as in the contemporary distinction between *democratic* and *efficient* government (e.g., Scharpf, 1999). Lord

Hailsham spoke plainly to this issue in a defence of his party's particularly severe budget of 1962 (cited in Birch, 1971: 116):

When a government has to choose between a run on the pound and its own popularity, it has only one choice it can make. It makes it unwillingly. It must face unpopularity, loss of by-elections and even, if need be, defeat at a later general election. This is the price of responsible government.

A heavy price, one might think. Yet Lord Hailsham is not alone in prioritising responsibility above the avoidance of predictable political ruin. In contemporary political science, too, theorists have argued for the critical importance of an approach to democratic politics that avoids an overemphasis of responsiveness at the expense of a neglect of responsibility. On this point, a particularly effective polemic has been provided by Juan J. Linz with Thomas Jeffrey Miley (2012), in which the authors lament the tendency within democratic political theory to give far too much attention to responsiveness, and far too little to responsibility, an error, says Linz, with "grave consequences". Particularly dangerous, says Linz, is the assumption (present throughout this thesis) that political elites ought to "mirror" public opinion, thereby entailing an abrogation of policy-makers' responsibility, which, argues Linz, citing the US Secretary of Defense during the Vietnam War, Robert McNamara, led to the needless extension of conflict.

In a similar vein, Gabriel Almond and Walter Lippmann famously argued that policy-makers defy public opinion. On their account, which has been termed the 'Almond-Lippman consensus', it was *necessary* for leaders to ignore public opinion because it is volatile, incoherent, and susceptible to manipulation (Lippmann, 1955; cited in Holsti, 1992). Their last point might be thought to aptly describe the British public's attitudes towards immigration, and it is one to which we shall soon return.

Before turning our attention to the unique character and function of the House of Lords, which is the only unelected upper chamber in Europe, it will be helpful to examine first the way in which MPs in the present study negotiated these guiding principles? In justifying their preferences and decisions, these actors were quick to invoke their duty to respond to the demands of their constituents. They did, after all, elect them to their Parliamentary seats. In their interviews and in Parliamentary debates MPs explained their support of the Immigration Bill by reference to the concerns in their constituencies as well as broader national issues. This dual rationale was also evident in the executive-

drafted supplementary materials to the Bill, both its *Factsheet* and *Explanatory Notes* (2013b).

Peers, on the other hand, being unelected and beholden to no constituency, had a different appreciation of their political obligations. Formally insulated from populist pressures – they cannot be removed from office at the next (or any) general election – they were more likely to invoke the idiom of ‘responsibility’ in their opposition to the Bill. This understanding of the role of the House of Lords, as the chamber of responsibility rather than responsiveness, was made clearly by Baroness Lister, Professor of Social Policy at Loughborough University, when she stated at Lords Second Reading (Hansard, 10 February 2014, col 492):

The more unpopular the group, the greater the responsibility on your Lordships’ House to look dispassionately yet sympathetically at their needs and their rights. Many outside organisations which campaign tirelessly on behalf of migrants, refugees and asylum seekers are now looking to us to speak up on their behalf and to amend the more damaging provisions in this Bill. I hope that we will not let them down.

The Lords are, moreover, sensitive to the Almond-Lippman consensus regarding the dangers of responsiveness, given that public opinion is so easily manipulated. This was implied by several Peers, and exemplified by Lord Dholakia, who argued in a speech to the Lords that (Hansard, 10 February 2014, col 436):

The dangers of skewed public debate in the past few months are obvious. It has been characterised by hysteria and hyperbole, which makes rational discussion extremely difficult.

Lord Paddick, a Liberal Democrat politician and formerly the Deputy Assistant Commissioner of the Metropolitan Police Service before his retirement in 2007, concurred with Lord Dholakia and drew attention to the “skewed public debate”, whilst adding (Hansard, 10 February 2014, col 511):

There is no hope of considering this Bill objectively...if it is done against the distorted backdrop painted by UKIP, the *Daily Mail* and their sympathisers.

We can now better appreciate why Peers, self-assured in the knowledge that they are appointed to their positions for life, doggedly and roundly opposed the Immigration Bill,

even though this might have been seen as running counter to popular opinion. It is perhaps for these reasons that the House of Lords appears to fulfil a unique constitutional role, acting not like the typical legislative body in conforming to popular opinion (Joppke, 1998a), but more like a national judiciary, such as the Supreme Court of the United States. Of course, that is not to say that Peers have no regard for popular opinion. As we saw, their members appeared ultimately to respect the democratic legitimacy inherent in the elected House by choosing not to reject the Bill at Lords Ping Pong. Furthermore, the same could be said for the judiciary, which is mindful of the rights of the citizenry, even when that means finding against the government.

We are now able to address the matter reflected rhetorically by the title of this section, concerning the role of the Lords as a ‘quasi-judicial’ chamber that grants precedence to responsibility before responsiveness to public opinion. Given that the judiciary has been widely characterised as not representing a liberalist constraint on the restrictionism of the British executive (Joppke), could it be that the Lords acts in at least partial fulfilment of the *judicial function*? More specifically, to the extent that the Lords may be viewed as compensatory in its liberalist influence, might it make up for a relative lack of judicial power in the UK, thereby acting as a counterweight to rebalance the UK’s already executive-oriented distribution of constitutional power? These questions could well form the basis for fruitful future research.

The role of the legislature in shaping immigration law: the broader significance of this study

As we have noted, existing research has suggested that the national legislature has played a distinctly *unimportant* role in influencing Western democracies’ legislative efforts to restrict immigration in line with public preferences. Given that the UK’s legislature is typically understood to be only a marginal actor in immigration law-making, and in general one of the weakest of all legislatures, the findings of this thesis imply that the general view, as well as that relating to the UK, may have to be revised.

National legislatures *can* reasonably be expected to constitute an important determinant of immigration law. More specifically, they may not necessarily represent the anti-immigration opinion of their constituents. As such, the possibility of their being a significant liberal influence should no longer be rejected *a priori*. Rather, researchers must remain open to the possibility of legislatures acting as a liberalist constraint upon the restrictionist bent of the executive, functioning neither passively nor as neutral arenas for

the activities of political parties and legislators, but as generative institutions of new immigration law.

These are general conclusions of which researchers ought to remain cognisant in analyses of immigration law-making, in view of the evident liberalist influence of the UK Parliament, especially through the work of its upper chamber. On the basis of the United Kingdom being a ‘most-likely’ case for possessing a marginal and restrictionist legislature, this research provides empirically-grounded evidence that could be interpreted as either invalidating this view, or lending support for the contention that the legislatures of other nations may be both more influential, and more liberally-oriented in immigration law-making than is presently understood.

At the same time, we cannot presume that the legislature of any specific liberal democracy will exhibit such characteristics. These will need to be considered on a case-by-case basis. That much is clear from this study’s comparison of each House of the bicameral UK Parliament.

Thus, first, MPs who make up the House of Commons do appear, as elected representatives, to reflect the will of the citizenry for immigration restrictionism. Yet, we must also remember that most of the changes to the Immigration Bill were *initiated* by MPs, even though they were brought *in* the House of Lords.

Second, few national legislatures will approximate the constitution of the House of Lords, which is the only upper chamber in the European Union, out of a maximum of twelve that are bicameral, which comprises unelected peers who are better insulated from popular pressures than their elected counterparts. Its reduced responsiveness to popular restrictionism allows it to exercise increased independence and responsibility relative to the Commons. In the absence of strong courts, Peers, especially crossbenchers, can be seen to assume a role to safeguard immigrants’ fundamental rights, as well as those of a more general constitutional and procedural nature.

Finally, then, we cannot assume that the legislatures of Western Europe will exhibit the liberalist bent seen in the UK Parliament, which originated mainly from the House of Lords, rare in being a fully-appointed chamber. Much may depend, therefore, on the institutional design of these other legislatures and upon legislators’ understanding of their role. In future research, investigators would be well advised to include in their analyses a consideration of these potentially most pertinent of phenomena to an understanding of immigration politics.

14 Afterword: Parliament and Brexit

Looking back from 2017, the reforms of the Immigration Act, then considered radical, now seem almost small beer. This is not the result of perceptual illusion. Today, the UK travels a road that is expected to end in the greatest tightening of its immigration regime since 1905, when the country first established a bureaucratised system of border controls. It certainly signals the greatest transformation in immigration regulation since the UK joined the European Economic Community in 1973 and opened its borders to some 250 million European nationals. These anticipated reforms are, of course, those that will be influenced by the terms of the Brexit settlement.

As things stand, the UK finds itself at a crossroads. To the left, access to the European Single Market entails the continued free movement of people between member states. To the right, a restrictive immigration policy – a principal reason many Britons voted Leave in the first place (Ashcroft, 2016) – would mean the UK's withdrawal from the Single Market. Alternatively, there remains scope for a third way: an approach to immigration lying somewhere between these opposing paths of the 'soft' and 'hard' versions of Brexit.

Amidst this uncertainty, more than one year after the referendum, two things seem sure. First, whatever the terms of the settlement, its reverberations are likely to be long felt. Second, there is no turning back.

Or is there? Might the executive renege on its promise to honour the 51.9 per cent majority that voted to leave the EU? And what of the legislature? Might the UK Parliament continue to act as a liberalist constraint by obstructing the executive's avowed intention to implement this most restrictionist of reforms? More specifically, might any such liberalist constraint emanate principally from the House of Lords, guided by its Peers' understanding of their duty to prioritise responsibility above responsiveness? Nor, perhaps, should we neglect that third branch of government, our judiciary, as the legal case of *Gina Miller* would seem aptly to demonstrate.

The 'Miller case' concerned the question of whether the British executive could trigger *without the approval of Parliament* 'Article 50 of the Treaty on European Union', thereby initiating the legal process of withdrawal. On 24 January 2017, the Supreme Court ruled in Miller's favour. Reflecting a broader pattern of consternation among Brexit supporters, the *Daily Mail* responded with the following front-page headline, beneath photographs of three of the Supreme Court's twelve judges:

ENEMIES OF THE PEOPLE

Fury over 'out of touch' judges who defied the 17.4m

Brexit voters and could trigger constitutional crisis

Nor did the British legislature escape the ire of the Daily Mail, concerned at the possibility of its scuppering the executive's efforts to leave the EU:

MPs last night tore into an unelected panel of 'out of touch' judges for ruling that embittered Remain supporters in Parliament should be allowed to frustrate the overwhelming verdict of the British public.

What, then, might our study of the Immigration Bill tell us about Parliament's role in the triggering of Article 50, this initial step on the two-year journey towards Brexit? Although set two years before the political earthquake of the Brexit vote, this research provides us with a helpful lens through which these struggles over Britain's departure may be brought into sharper focus.

On 26 January 2017, with the executive compelled by the judiciary to seek permission from the legislature to trigger Article 50, the Government introduced to Parliament the European Union (Notification of Withdrawal) Bill 2017. The Bill's long title was:

A BILL TO Confer power on the Prime Minister to notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU.

At just 137 words, the Bill's passage through Parliament was much faster than that of the Immigration Bill. After its First Reading on 26 January 2017, it received Royal Assent on 16 March 2017, just thirty-nine days later.

Like the Immigration Bill, the legislation received the support of the Labour leadership. Jeremy Corbyn, a backbencher when interviewed for this research, but now leader of the Labour Party, stated: "I am asking all our MPs not to block Article 50 and make sure it goes through next week." Just ten Labour MPs, out of a total of 230, voted Leave in the referendum (BBC News, 2016); and to ensure compliance, the party introduced a three-line whip, the strictest instruction to attend and vote in support of the Bill. Defiance could be expected to invite serious reprimand – even though just ten Labour MPs, out of a total of 230, voted Leave in the referendum.

At the Bill's Second Reading, which took place on 31 January and 1 February, the House of Commons voted by a substantial majority in support of the legislation, by 498 to 114. Even though 346 MPs had voted Remain, a majority of these decided to support the Bill because, as many explained, they were *democrats*. They assigned supremacy to the democratic principle, to reflect the preferences of the national public and constituents, over and above their personal views.

Reflecting the importance of the legislation, the next stage was a 'Committee of the whole House'⁵³. The programme was swift. The Commons Committee was scheduled to take place on 6, 7, and 8 February, with the Report and Third Reading stages also taking place on 8 February. Across all these debates, eighteen amendments in total were pushed to a vote. All were rejected – and by large margins. On 8 February, the Commons voted by 494 votes to 122 to progress the Bill, unchanged.

However, on 1 March, at Lords Committee, the Government suffered its first defeat. The Lords voted to approve an amendment, by 358 to 256, which added to the Bill a requirement that the Government introduce proposals, within three months of the withdrawal notification, to ensure that the near-three million EU and EEA citizens legally resident in the UK would have the same residence rights after Brexit as before. A second successful amendment followed, one of pivotal significance from the perspective of constitutional politics. It granted Parliament a veto over the outcome of the Brexit negotiations.

The Commons voted to overturn the Lords amendment guaranteeing the rights of EU nationals, by 335 to 287, a majority of 48. The second Lords amendment, to give Parliament a vote on the Brexit settlement, was also rejected by MPs, by 331 to 286, a majority of 45.

The Bill was returned promptly to the upper chamber, its 137 words unchanged. Here was the crucial moment – for the Bill, for the commencement of Article 50, and for Brexit. Would the House of Lords assert itself against the Commons and insist on its amendments? Or would it back down, as it did for the Immigration Bill, and out of respect for the legitimacy of the elected house?

Consonant with the findings of this enquiry, the Lords bowed to the democratic supremacy of the elected lower chamber. By substantial majorities, they accepted the Commons' decision to remove the first amendment, by 274 votes to 135, and the second

⁵³ In the House of Commons, bills that are expected to be particularly important or contentious are heard by a Committee of the Whole House. Finance bills are always sent to a Committee of the whole House in the Commons.

amendment, by 274 to 118. This resulted mainly from the mass abstention of Labour and Crossbench Peers. Out of 202 Labour Peers, just twenty-one voted on whether the first amendment should be reinstated, nineteen of these against the wishes of the Commons. The second amendment division attracted the votes of twenty-six Labour Peers, twenty-five of whom voted against the Commons. Of the 177 Lords Crossbenchers, 125 abstained from the first division, and 119 from the second.

However, it was not solely out of respect for the greater legitimacy of the lower house that these Peers refused *en masse* to obstruct the legislation. As in the Bill's passage through Parliament, Labour Peers had received instruction from whips. The Labour leader in the Lords, Baroness Smith of Basildon, explained the rationale for the party's decision: continuing to oppose the Government would be playing politics because MPs would not be persuaded to change their minds. "If I thought there was a foot in the door or a glimmer of hope that we could change this bill", said Smith, "I would fight it tooth and nail. But it doesn't seem to be the case" (Mason *et al.*, 2017).

Even so, at the final Lords division – the last opportunity for the House to take a stand against the Commons – fully 669 Peers, out of a total of 804, decided *not* to obstruct the Bill, with 274 voting, in effect, to enact it without amendment, and with 395 choosing to abstain. Just 135 Peers, less than a quarter of those present, actively opposed the legislation, by insisting on the reintroduction of their amendment.

That hardly speaks to the assertive upper chamber that has been documented in the present study. *The question*, of course, *is why*. What explains the Lords' conspicuous failure to constitute a liberalist constraint at this crucial stage in the Brexit process? Especially vexing is the voting behaviour of the *Crossbenchers*. Why would these supposedly more independent Peers, bound neither by three-line whips nor party sanctions, remain quiet in the face of a bill to which many had displayed impassioned opposition? *That* is the foremost question.

It is a question that only further empirical research could truly answer. By way of conjecture, however, could it be that in addition to a respect for the primacy of the House of Commons, a great many of these 669 Peers resisted their inclination to oppose the Government out of a sense of duty to the principle of responsibility. In so doing, they would be honouring a still higher principle, supreme in the hierarchy of the forms of democratic legitimacy, and hence superordinate to that represented by the elected lower house. Quite simply, as was argued by numerous Peers, irrespective of affiliation, in debates on the Article 50 bill, primacy would be given to respecting that which is immanent in the referendum result, namely – the will of the people.

Appendix: On-the-record interviewees

Interviewee	Affiliation (or position)	Notes	Interview date
PEERS			
Lord Best (Richard Best)	Crossbench	Appointed to a Peerage on the basis of his advocacy of social housing.	23 Oct 2014
Lord Avebury (Eric Lubbock)	Liberal Democrats	Former Liberal Democrat MP for Orpington.	12 Nov 2014
Lord Judd (Frank Judd)	Labour Party	Former Labour Party MP and government minister.	24 Nov 2014
Lord Ramsbotham GCB, CBE (David Ramsbotham)	Crossbench	Former General of the British Army, and formerly Her Majesty's Chief Inspector of Prisons (1995–2001).	2 Dec 2014
Lord Hannay of Chiswick GCMG, CH (David Hannay)	Crossbench	Former British Ambassador to the UN.	3 Dec 2014
3rd Earl Attlee (John Attlee)	Conservative Party	Lord-in-Waiting (Government whip in the House of Lords, with the same constitutional status as a departmental minister).	3 Dec 2014
Baroness Lister of Burtersett CBE, FAcSS (Ruth Lister)	Labour Party	Professor of Social Policy, Loughborough University.	15 Dec 2014

THE LEGISLATURE IN IMMIGRATION POLICY-MAKING

Baroness Barker (Liz Barker)	Liberal Democrats	Charity worker, Age Concern (1983–2007).	15 Dec 2014
Lord Pannick QC (David Pannick)	Crossbench	Barrister and Deputy High Court Judge.	6 Jan 2015
Baroness Hamwee (Sally Hamwee)	Liberal Democrats	Lead Home Affairs Spokesman for the Liberal Democrats in the House of Lords. Former chair of the London Assembly, and formerly a solicitor.	26 Jan 2015

MPs

Dr Julian Huppert	Liberal Democrats	The Liberal Democrats' Spokesman in the House of Commons. MP for Cambridge.	17 Oct 2014
Norman Baker	Liberal Democrats	Minister of State for Crime Prevention, with responsibility for defending the Immigration Bill at Commons Committee. MP for Lewes.	3 Nov 2014
Jeremy Corbyn	Labour Party	Backbencher. MP for Islington North.	3 Nov 2014
Sarah Teather	Liberal Democrats	Backbencher. MP for Brent Central.	11 Nov 2014
Meg Hillier	Labour Co-operative	Backbencher. MP for Hackney South and Shoreditch.	27 Nov 2014

CIVIL SERVANTS

Liz Edmunds	Former Immigration Service Administrator	In this role, Edmunds interviewed immigration applicants at the UK border, including asylum seekers.	6 Dec 2014
--------------------	--	--	------------

Appendix: On-the-record interviewees

LOBBYISTS

Rachel Robinson	Policy Officer, Liberty	Non-practising barrister, background in immigration and asylum law.	31 Oct 2014
Prof Vivienne Nathanson	Director of Professional Activities, British Medical Association	Fellow of the Royal College of Physicians; published author in the field of medical ethics.	4 Nov 2014
Alp Mehmet	Vice-chair, MigrationWatch UK	Former British Ambassador to Iceland.	4 Dec 2014
Katharine Sacks-Jones	Head of Policy and Campaigns, Crisis	Former Parliamentary caseworker.	10 Dec 2014
Richard Price	Board Director, National Landlords Association	Negotiated with the Government to improve the landlord provisions of the Bill.	12 Dec 2014
Alison Harvey	Policy Director, Immigration Law Practitioners' Association	Non-practising barrister. Co-ordinated external groups' Bill scrutiny.	8 Jan 2015

Bibliography⁵⁴

3PB Barristers (2016). *Barrister Profile: Guy Opperman* [online]. Retrieved 29 September 2016, from <http://www.3pb.co.uk/profile/guy-opperman/group/general/pdf>

Abbott, D. (2011). The Dead Hand of the Whips. *The Guardian*, 15 February.

Abella, I. and Troper, H. (1983). *None is Too Many: Canada and the Jews of Europe 1933-48*. Toronto: Key Porter Books.

Aberbach, J. D. and Rockman, B. A. (2002). Conducting and Coding Elite Interviews. *Political Science and Politics*, 35(4): 673-676.

Aitken, J. (2005). *Porridge and Passion*. London: Continuum.

Alexander, J. C. (2013). Struggling over the Mode of Incorporation: Backlash Against Multiculturalism in Europe. *Ethnic and Racial Studies*, 36(4): 531-556.

Aliens' Rights in Contemporary Western Europe, 1974-1994. Harvard University Government Department: PhD Thesis.

Allen, A. (2012). The Unforced Force of the Better Argument. *Constellations*, 19(3): 353-368.

Allen, G. (2013). *Evidence submission from Graham Allen MP (P20)*. Written evidence submitted to the Procedure Committee for its inquiry into the Committee of Selection and membership of general committees.

Amegashie, J. A. (2005). A Political Economy Model of Immigration Quotas. *Economics of Governance*, 5: 255-267.

⁵⁴ This bibliography includes both works that are cited in the thesis, and works drawn upon but not cited.

- Anderson, B. and Blinder, S. (2012). *Who Counts as a Migrant? Definitions and their Consequences*. Migration Observatory Briefing, COMPAS, University of Oxford, UK.
- Arendt, H. (1973/1951). *The Origins of Totalitarianism*. Orlando, FL: Houghton Mifflin Harcourt.
- Armingeon, K., Isler, C., Knöpfel, L., Weisstanner, D. and Engler, S. (2013). *Codebook: Comparative Political Data Set 1960-2013*. Bern: Institute of Political Science, University of Bern.
- Ashcroft, M. (2013). *Small Island: Public Opinion and the Politics of Immigration*. London: Lord Ashcroft Polls.
- Ashcroft, M. (2016). How the United Kingdom voted on Thursday... and why - Lord Ashcroft Polls. Lordashcroftpolls.com. Retrieved 27 September 2016, from <http://lordashcroftpolls.com/2016/06/how-the-united-kingdom-voted-and-why/>
- Ashton, E. (2013). Ministers bottle Romanian vote. *The Sun*, 6 December.
- Audickas, L. (2016). *Ethnic Minorities in Politics and Public Life*. London: House of Commons Library.
- Baker, S. E. and Edwards, R. (2012). *How many qualitative interviews is enough? Expert voices and early career reflections on sampling and cases in qualitative research*. Southampton: ESRC National Centre for Research Methods, University of Southampton.
- Balch, A. (2010). *Managing Labour Migration in Europe: Ideas, Knowledge and Policy Change*. Manchester: Manchester University Press.
- Balch, A. and Balabanova, E. (2011). A System in Chaos? Knowledge and Sense-Making on Immigration Policy in Public Debate. *Media, Culture & Society*, 33(6): 885-904.
- Baldwin-Edwards, M. (1997). The Emerging European Immigration Regime: Some Reflections on Implications for Southern Europe. *JCMS: Journal of Common Market Studies*, 35(4): 497-519.
- Bale, T. (2008a). Turning Round the Telescope: Centre-Right Parties and Immigration and Integration Policy in Europe. *Journal of European Public Policy*, 15(3): 315-330.

Bibliography

- Bale, T. (2008b). Politics Matters: A Conclusion. *Journal of European Public Policy*, 15(3): 453-464.
- Bale, T. (2014). Putting it Right? The Labour Party's Big Shift on Immigration Since 2010. *The Political Quarterly*, 85(3): 296-303.
- Bale, T., Green-Pedersen, C., Krouwel, A., Luther, K. and Sitter, N. (2010). If You Can't Beat Them, Join Them? Explaining Social Democratic Responses to the Challenge from the Populist Radical Right in Western Europe. *Political Studies*, 58(3): 410-426.
- Bale, T. and Partos, R. (2014). Why Mainstream Parties Change Policy on Migration: A UK Case Study – The Conservative Party, Immigration and Asylum, 1960–2010. *Comparative European Politics*, 12(6): 603-619.
- Banaian, K., Bodvarsson, Ö. B. and Lowenberg, A. D. (2006). *A Test of Congressional Voting on Immigration Restrictions*. St. Cloud State University, mimeo.
- Baron, S., Field, J. and Schuller, T. (Eds.) (2000). *Social Capital: Critical Perspectives*. Oxford University Press.
- Bauböck, R. (1994). *Transnational Citizenship: Membership Rights in International Migration*. London: Edward Elgar.
- Bauder, H. (2008). Media Discourse and the New German Immigration Law. *Journal of Ethnic and Migration Studies*, 34(1): 95-112.
- BBC News (2000). 58 dead in port lorry. News.bbc.co.uk. Retrieved 4 August 2017, from <http://news.bbc.co.uk/1/hi/uk/796791.stm>
- BBC News (2016). EU vote: Where the cabinet and other MPs stand. Retrieved 4 August 2017, from <http://www.bbc.co.uk/news/uk-politics-eu-referendum-35616946>
- Beamer, G. (2002). Elite Interviews and State Politics Research. *State Politics & Policy Quarterly*, 2(1): 86-96.
- Beard, C. A. and Beard, M. R. (1944). *A Basic History of the United States*. New York: Doubleday, Doran & Co..
- Benhabib, J. (1996). On the Political Economy of Immigration. *European Economic Review*, 40: 1737-1743.

- Berry, J. M. (2002). Validity and Reliability Issues in Elite Interviewing. *Political Science and Politics*, 35(4): 679-68.
- Bevir, M. and O'Brien, D. (2001). New Labour and the Public Sector in Britain. *Public Administration Review*, 61(5): 535-547.
- Bevir, M. and Rhodes, R. A. W. (1999). Studying British Government: Reconstructing the Research Agenda. *The British Journal of Politics and International Relations*, 1(2): 215-239.
- Bevir, M. and Rhodes, R. A. W. (2001). Decentering Tradition: Interpreting British Government. *Administration & Society*, 33(2): 107-132.
- Bevir, M. and Rhodes, R. A. W. (2003). *Interpreting British Governance*. London: Routledge.
- Bevir, M. and Rhodes, R. A. W. (2006). *Governance Stories*. London: Routledge.
- Bevir, M. and Rhodes, R. A. W. (2006a). Interpretive Approaches to British Government and Politics. *British Politics*, 1(1): 84-112.
- Bevir, M. and Rhodes, R. A. W. (2006b). The Life, Death and Resurrection of British Governance. *Australian Journal of Public Administration*, 65(2): 59-69.
- Bevir, M. and Rhodes, R. A. W. (2007). Decentred Theory, Change and Network Governance. In Sørensen, E. and Torfing, J. (Eds.), *Theories of Democratic Network Governance* (77-91). London: Palgrave Macmillan.
- Bevir, M. and Rhodes, R. A. W. (2008). The Differentiated Polity as Narrative. *The British Journal of Politics and International Relations*, 10(4): 729-734.
- Bevir, M. and Rhodes, R. A. W. (2012). Interpretivism and the Analysis of Traditions and Practices. *Critical Policy Studies*, 6(2), 201-208.
- Bevir, M., Rhodes, R. A. W. and Weller, P. (2003). Traditions of Governance: Interpreting the Changing Role of the Public Sector. *Public Administration*, 81(1): 1-17.
- Bigo, D. (1996). *Polices en Réseaux: L'Expérience Européenne*. Paris: Presses de la Fondation Nationale de Science Politique.

Bibliography

- Bigo, D. (2001). Migration and Security. In Guiraudon, V. and Joppke, C. (Eds.), *Controlling a New Migration World* (121-149). London: Routledge.
- Birch, A. H. (1964). *Representative and Responsible Government*. London: George Allen & Unwin.
- Birch, A. H. (1971). *Representation*. London: Macmillan Education.
- Birrell, R. (1981). *An Issue of People: Population and Australian Society*. Melbourne: Longman Cheshire.
- Blatt, D. (1995). Towards a Multi-Cultural Political Model in France? The Limits of Collective Action, 1968-94. *Nationalism and Ethnic Politics*, 1(2): 156-177.
- Bleich, E. (2003). *Race Politics in Britain and France: Ideas and Policy-making since the 1960s*. Cambridge: Cambridge University Press.
- Bleich, E. (2002). Integrating Ideas into Policy-Making Analysis: Frames and Race Policies in Britain And France. *Comparative Political Studies*, 35(9): 1054-1076.
- Bolzmann, C. and Fibbi, R. (1991). Collective Assertion Strategies of Immigrants in Switzerland. *International Sociology*, 6(3): 321-341.
- Bonjour, S. (2011). The Power and Morals of Policy Makers: Reassessing the Control Gap Debate. *International Migration Review*, 45(1): 89-122.
- Booth, R. (2013). Secret papers show extent of senior royals' veto over bills. *The Guardian* [online]. Retrieved 27 August 2015, from <http://www.theguardian.com/uk/2013/jan/14/secret-papers-royals-veto-bills>
- Borjas, G. J. (1999). *Heaven's Door: Immigration Policy and the American Economy*. Princeton, NJ: Princeton University Press.
- Boswell, C. (2003). *European Migration Policies in Flux: Changing Patterns of Inclusion and Exclusion*. Oxford: Blackwell.
- Boswell, C. (2007). Theorizing Migration Policy: Is There a Third Way?. *International Migration Review*, 41(1): 75-100.

Boswell, C. (2008). The Political Functions of Expert Knowledge: Knowledge and Legitimation in European Union Immigration Policy. *Journal of European Public Policy*, 15(4): 471-488.

Boswell, C. (2009a). Knowledge, Legitimation and the Politics of Risk: The Function of Research in Public Debates on Migration. *Political Studies*, 57(1): 165-186.

Boswell, C. (2009b). *The Political Uses of Expert Knowledge: Immigration Policy and Social Research*. Cambridge: Cambridge University Press.

Boswell, C. (2012). How Information Scarcity Influences the Policy Agenda: Evidence from U.K. Immigration Policy. *Governance: An International Journal of Policy, Administrations, and Institutions*, 25(3): 367-389.

Boswell, C. and Geddes, A. (2011). *Migration and Mobility in the European Union*. London: Palgrave Macmillan.

Boswell, C. and Hough, D. (2008). Politicizing Migration: Opportunity or Liability for the Centre-Right in Germany? *Journal of European Public Policy*, 15(3): 331-348.

Boswell, C., Geddes, A. and Scholten, P. (2011a). The Role of Narratives in Migration Policy-Making: A Research Framework. *The British Journal of Politics & International Relations*, 13(1): 1-11.

Boswell, C., Geddes, A. and Scholten, P. (Eds.) (2011b). *States, Knowledge and Narratives of Migration: The Construction of Migration in European Policy-Making*. Oxford: Blackwell.

Bourdieu, P. (1981). La représentation politique: éléments pour une théorie du champ politique. *Actes de la Recherche en Sciences Sociales*, 36/37: 3-24.

Bourdieu, P. and Wacquant, L. (1992). *An Invitation to Reflexive Sociology*. Cambridge: Polity.

Bovenkerk, F., Miles, R. and Verbunt, G. (1990). Racism, Migration and the State in Western Europe: A Case for Comparative Analysis. *International Sociology*, 5(4): 475-490.

Bibliography

- Bovenkerk, F., Miles, R. and Verbunt, G. (1991). Comparative Studies of Migration and Exclusion on the Grounds of 'Race' and Ethnic Background in Western Europe: A Critical Appraisal. *International Migration Review*, 25(2): 375-391.
- Brazier, A., Kalitowski, S., Rosenblatt, G. and Korris, M. (2008). *Law in the Making: Influence and Change in the Legislative Process*. London: Hansard Society.
- Brettell, C. B., and Hollifield, J. F. (Eds.) (2000). *Migration Theory: Talking Across Disciplines*. New York and London: Routledge.
- Brochmann, G. (1999a). The Mechanisms of Control. In Brochmann, G. and Hammar, T. (Eds.), *Mechanisms of Control: A Comparative Analysis of European Regulation Policies* (1-27). Oxford: Berg.
- Brochmann, G. (1999b). Controlling Immigration in Europe. In Brochmann, G. and Hammar, T. (Eds.), *Mechanisms of Control: A Comparative Analysis of European Regulation Policies* (297-334). Oxford: Berg.
- Broeders, D. and Engbersen, G. (2007). The Fight Against Illegal Migration. *American Behavioral Scientist*, 50(12): 1592-1609.
- Brubaker R. (1995). Comments on 'Modes of Immigration Politics in Liberal Democratic States'. *International Migration Review*, 29(4): 903-908.
- Brubaker, R. (1992). *Citizenship and Nationhood in France and Germany*. Cambridge, MA: Harvard University Press.
- Bruquetas-Callejo, M., Garcés-Mascareñas, B., Penninx, R. and Scholten, P. (2011). The Case of the Netherlands. In Zincone, G., Penninx, R. and Borkert, M. (Eds.), *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present* (129-163). Amsterdam: Amsterdam University Press.
- Bygnes, S. (2008). Interviewing People-Oriented Elites. *Eurosphere Working Paper Series*.
- Cabinet Office (2010). Ministerial Code. London: Cabinet Office. Retrieved 1 June 2015, from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468255/Final_draft_ministerial_code_No_AMENDS_14_Oct.pdf

- Cabinet Office (2013). *Consultation Principles*. London: Cabinet Office.
- Cable, V. (1995). The Diminished Nation-State: A Study in the Loss of Economic Power. *Daedalus*, 124(2): 23-53.
- Calavita, K. (1992). *Inside the State: The Bracero Program, Immigration, and the INS*. London: Routledge.
- Cameron, D. (2013). David Cameron's immigration speech. *Cabinet Office, Prime Minister's Office*, 25 March 2013.
- Čaněk, M. and Pavel Čížinský, P. (2011). The Case of the Czech Republic. In Zincone, G., Penninx, R. and Borkert, M. (Eds.), *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present* (347-376). Amsterdam: Amsterdam University Press.
- Carrasco, H. (2016). *I live in fear of deportation: My life as an undocumented worker*. *Salon*. Retrieved 27 September 2016, from http://www.salon.com/2014/05/17/i_live_in_fear_of_deportation_my_life_as_an_undocumented_worker/
- Casey, T. (2009). *The Blair Legacy: Politics, Policy, Governance, and Foreign Affairs*. Basingstoke: Palgrave Macmillan.
- Castells, M. (1975). Immigrant Workers and Class Struggles in Advanced Capitalism: The Western European Experience. *Politics and Society*, 5(1): 33-66.
- Castles, S. (2004). The Factors that Make and Unmake Migration Policies. *International Migration Review*, 38(3): 852-884.
- Castles, S. and Kosack, G. (1985). *Immigrant Workers and Class Structure in Western Europe*. New York: Oxford University Press.
- Castles, S., de Haas, H. and Miller, M. J. (2014). *The Age of Migration: International Population Movements in the Modern World (5th Edition)*. London: Palgrave Macmillan.
- Caviedes, A. (2010). *Prying Open Fortress Europe: The Turn to Sectoral Labor Migration*. Lanham, MD: Lexington Books.

Bibliography

Ceobanu, A. M. and Escandell, X. (2010). Comparative Analyses of Public Attitudes Toward Immigrants and Immigration Using Multinational Survey Data: A Review of Theories and Research. *Annual Review of Sociology*, 36: 309-328.

Cerna, L. (2009). The Varieties of High-Skilled Immigration Policies: Coalitions and Policy Outputs in Advanced Industrial Countries. *Journal of European Public Policy*, 16(1): 144-161.

Cerna, L. and Wietholtz, A. (2011). The Case of the United Kingdom. In Zincone, G., Penninx, R. and Borkert, M. (Eds.), *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present* (195-244). Amsterdam: Amsterdam University Press.

Chapman, J. (2013). Tough stance on new influx from the east. *Daily Mail*, 29 January 2013.

Chavez, L. (1992). *Shadowed Lives*. Fort Worth, TX: Harcourt Brace Jovanovich College Publishers.

Clark, R. (2013). Cameron's Speech on Migration Did Not Go Far Enough. *Daily Express*, 26 March 2013.

Clayton, G. (2012). *Textbook on Immigration and Asylum Law*. Oxford: Oxford University Press.

Clegg, N. (2013). Deputy Prime Minister's speech on immigration. *Cabinet Office, Deputy Prime Minister's Office*, 22 March 2013.

Cohen, J. (1989). Deliberation and Democratic Legitimacy. In Hamlin, A. and Petit, P. (Eds.), *The Good Polity: Normative Analysis of the State* (17-34). New York: Blackwell.

Cohen, S. (2002). *Folk Devils and Moral Panics*. London: Routledge.

Conservative Party (2010). *Invitation to Join the Government of Britain: The Conservative Manifesto 2010*. London: The Conservative Party.

Consterdine, E. (2013). *One Step Forward, Two Steps Back: Evaluating the Institutions of British Immigration Policy-Making*. London: Institute for Public Policy Research.

Consterdine, E. (2014). *Interests, Ideas, and Institutions: Explaining Immigration Policy Change in the UK, 1997-2010*. University of Sussex: PhD Thesis.

Consterdine, E. (2015a). Managed Migration Under Labour: Organised Public, Party Ideology and Policy Change. *Journal of Ethnic and Migration Studies*, 41(9): 1433-1452.

Consterdine, E. (2015b). From Zero Migration to the Migration State: Whitehall Cultures, Institutional Conversion and Policy Change. *International Journal of Public Policy*, 11(4/5/6): 129-142.

Consterdine, E. and Hampshire, J. (2014). Immigration Policy Under New Labour: Exploring a Critical Juncture. *British Politics*, 9: 275-296.

Convey, A. and Kupiszewski, M. (1995). Keeping Up with Schengen: Migration and Policy in the European Union. *International Migration Review*, 29(4): 939-963.

Cornelius, W. A. and Rosenblum, M. R. (2005). Immigration and Politics. *Annual Review of Political Science*, 8: 99-119.

Cornelius, W. A. and Tsuda, T. (2004). Controlling Immigration: The Limits of Government Intervention. In Cornelius, W., Tsuda, T., Martin, P. L. and Hollifield, J. F. (Eds.), *Controlling Immigration: A Global Perspective (2nd Edition)* (3-48). Stanford, CA: Stanford University Press.

Cornelius, W. A., Martin, P. L. and Hollifield, J. F. (Eds.) (1994). *Controlling Immigration: A Global Perspective (1st Edition)*. Stanford, CA: Stanford University Press.

Cornelius, W. A., Tsuda, T., Martin, P. L. and Hollifield, J. F. (Eds.) (2004). *Controlling Immigration: A Global Perspective (2nd Edition)*. Stanford, CA: Stanford University Press.

Cowan, (2016). Undemocratic, unaccountable and out of touch: the reality of the House of Lords. *Politics First*. Retrieved 27 September 2016, from <http://www.politicsfirst.org.uk/2016/undemocratic-unaccountable-and-out-of-touch-the-reality-of-the-house-of-lords/>

Craig, R. B. (1971). *The Bracero Program: Interest Groups and Foreign Policy*. University of Texas Press.

Crick, B. (1970). *The Reform of Parliament*. London: Weidenfield and Nicolson.

Bibliography

- Curtin, D. (2014). Challenging Executive Dominance in European Democracy. *The Modern Law Review*, 77(1): 1-32.
- Czaika, M. and de Haas, H. (2011a). *The Effectiveness of Immigration Policies: A Conceptual Review of Empirical Evidence*. IMI/DEMIG working paper, International Migration Institute, University of Oxford.
- Czaika, M. and de Haas, H. (2011b). *Determinants of Migration to the UK*. Migration Observatory Briefing, COMPAS, University of Oxford, UK.
- Czaika, M. and de Haas, H. (2013). The Effectiveness of Immigration Policies. *Population and Development Review*, 39(3): 487-508.
- D'Amato, G. (2011). The Case of Switzerland. In Zincone, G., Penninx, R. and Borkert, M. (Eds.), *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present* (165-193). Amsterdam: Amsterdam University Press.
- D'Arcy, M. (2013). An Elaborate Ritual. *BBC News*, 6 March. Retrieved 28 September 2016 from <http://www.bbc.co.uk/news/uk-politics-21686933>
- Dahl, R. A. (1956). *A Preface to Democratic Theory*. Chicago, IL: University of Chicago Press.
- Dahl, R. (1989). *Democracy and Its Critics*. New Haven: Yale University Press.
- Dahlstrom, C. and Sundell, A. (2011). *Losing Gamble: Mainstream Parties' Failed Strategy to Counter Anti-Immigrant Parties*. QoG Working Paper Series 2011:5, March 2011.
- Daily Express (2012). 160,000 illegals 'lost'. Retrieved 28 August 2015, from <http://www.express.co.uk/news/uk/330797/160-000-illegals-are-lost>
- Daily Express (2013a). Clegg dumps Lib Dem vow on amnesty. *Daily Express*, 23 March 2013.
- Daily Express (2013b). Call to bar free NHS migrants. *Daily Express*, 5 June 2013.
- Daily Mirror (2012). Vaz hits out at migrant cases chaos. *Daily Mirror*, 9 November 2012.
- Davis, A. J. (2012). *The Impact of Anti-Immigration Parties on Mainstream Parties' Immigration Positions in the Netherlands, Flanders, and the UK 1987-2010: Divided*

Electorates, Left-Right Politics and the Pull towards Restrictionism. European University Institute: PhD Thesis.

de Haas, H. (2011). *The Determinants of International Migration*. IMI/DEMIG working paper, International Migration Institute, University of Oxford, UK.

Delaney, K. J. (2007). Methodological Dilemmas and Opportunities in Interviewing Organizational Elites. *Sociology Compass*, 1(1): 208-221.

Dell'Olio, F. (2005). *The Europeanization of Citizenship: Between the Ideology of Nationality, Immigration, and European Identity*. Surrey: Ashgate.

Demireva, N. (2014). *Immigration, Diversity and Social Cohesion*. Migration Observatory briefing, COMPAS, University of Oxford.

Dennison, J. and Goodwin, M. (2015). Immigration, Issue Ownership and the Rise of UKIP. *Parliamentary Affairs*, 68(suppl 1): 168-187.

Dexter, L. (1964). The Good Will of Important People: More on the Jeopardy of the Interview. *Public Opinion Quarterly*, 28(4): 556-563.

Dexter, L. A. (1969). *The Sociology and Politics of Congress*. Chicago: Rand McNally.

Dexter, L. A. (2006). *Elite and Specialized Interviewing*. Colchester: European Consortium for Political Research.

Dirks, G. E. (1977). *Canada's Refugee Policy: Indifference or Opportunism?*. Montreal: McGill-Queen's Press-MQUP.

Divine, R. A. (1957). *American Immigration Policy, 1924-1952*. Yale University Press.

Djajić, S. (2001). *International Migration: Trends, Policies and Economic Impact*. London: Routledge.

Doyle, J. (2012). Border chaos lets 150,000 migrants overstay their visas. *Daily Mail*, 4 July.

Doyle, J. (2013). Don't lift curbs on Romanian migrants, Tories tell Cameron. *Daily Mail*, 19 November.

Bibliography

- Duffy, B. and Frere-Smith, T. (2014). *Perceptions and Reality: Public Attitudes to Immigration*. London: Ipsos MORI Social Research Institute.
- Dummett, A. and Nicol, A. G. L. (1990). *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law*. London: Weidenfeld.
- Duncan, F. and Van Hecke, S. (2008). Immigration and the Transnational European Centre-Right: A Common Programmatic Response? *Journal of European Public Policy*, 15(3): 432-452.
- Dunn, J. (1990). *Interpreting Political Responsibility: Essays, 1981–1989*. Princeton, NJ: Princeton University Press.
- Düvell, F. (2006). *Illegal immigration in Europe*. Houndmills: Palgrave Macmillan.
- Eckstein, H. (1975). Case Studies and Theory in Political Science. In Greenstein, F. I. and Polsby, N. W. (Eds.), *Handbook of Political Science. Political Science: Scope and Theory* (7: 94-137). Reading, MA: Addison-Wesley.
- Edwards, B. and McCarthy, J. D. (2004). Resources and Social Movement Mobilization. In Snow, D. A., Soule, S. A. and Kriesi, H. (Eds.), *The Blackwell Companion to Social Movements* (116-152). Oxford: Blackwell.
- Eisinger, P. K. (1973). The Conditions of Protest Behavior in American Cities. *American Political Science Review*, 67(1): 11-28.
- Ellermann, A. (2006). Street-Level Democracy: How Immigration Bureaucrats Manage Public Opposition. *West European Politics*, 29(2): 293-309.
- Ellermann, A. (2009). *States Against Migrants: Deportation in Germany and the United States*. Cambridge: Cambridge University Press.
- Equal Rights Trust (2013). *Case Summary: Secretary of State for the Home Department v Al-Jedda*. Retrieved 29 September 2016 from http://www.equalrightstrust.org/ertdocumentbank//Case%20Summary_Al%20Jedda.pdf
- European Monitoring Centre on Racism and Xenophobia (2001). *Attitudes Towards Minority Groups in the European Union*. Vienna: SORA.

- Evans, G. and Mellon, J. (2015). Working Class Votes and Conservative Losses: Solving the UKIP Puzzle. *Parliamentary Affairs*, 69(2): 464-479.
- Facchini, G. and Mayda, A. (2008). From Individual Attitudes Towards Migrants to Migration Policy Outcomes: Theory and Evidence. *Economic Policy*, October: 651-713.
- Facchini, G. and Mayda, A. (2009). *The Political Economy of Immigration Policy*. UN Human Development Research Paper 2009/03.
- Facchini, G. and Steinhardt, M. F. (2011). What Drives US Immigration Policy? Evidence from Congressional Roll Call Votes. *Journal of Public Economics*, 95(7): 734-743.
- Facchini, G., Mayda, A. M. and Mishra, P. (2011). Do Interest Groups Affect US Immigration Policy?. *Journal of International Economics*, 85: 114-128.
- Favell, A. (2001). *Philosophies of Integration: Immigration and the Idea of Citizenship in France and Britain (2nd Edition)*. New York: Palgrave Macmillan.
- Feldblum, M. (1998). Reconfiguring Citizenship in Western Europe. In Joppke, C. (Ed.), *Challenge to the Nation-State: Immigration in Western Europe and the United States* (231-270). Oxford: Oxford University Press.
- Fetzer, J. S. (2000). *Public Attitudes Toward Immigration in the United States, France, and Germany*. New York, NY: Cambridge University Press.
- Fetzer, J. S. (2006). Why Did House Members Vote for HR 4437?. *International Migration Review*, 40(3): 698-706.
- Finnemore, M. (1993). Norms, Culture and World Politics: Insights from Sociology's Institutionalism. *International Organization*, 50(2): 325-347.
- Fischer, A., Nicolet, S. and Sciarini, P. (2002). Europeanisation of a Non-EU Country: The Case of Swiss Immigration Policy. *West European Politics*, 25(4): 143-170.
- Fish, M. S. and Kroenig, M. (2009). *The Handbook of National Legislatures: A Global Survey*. Cambridge University Press.
- Fitzgerald, K. (1996). *The Face of the Nation: Immigration, the State, and the National Identity*. Stanford, CA: Stanford University Press.

Bibliography

- Flinders, M. and Kelso, A. (2011). Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis. *The British Journal of Politics and International Relations*, 13(2): 249-68.
- Flyvbjerg, B. (1998). *Rationality and Power: Democracy in Practice*. Chicago, IL: The University of Chicago Press.
- Foot, P. (1965). *Immigration and Race in British Politics*. Baltimore: Penguin.
- Ford, R. and Goodwin, M. (2015). Different Class? UKIP's Social Base and Political Impact: A Reply to Evans and Mellon. *Parliamentary Affairs*, 69(2): 480-491.
- Ford, R. and Lymperopoulou, K. (2017). Immigration. In Clery, E., Curtice, J. and Harding R. (Eds.), *British Social Attitudes: The 34th Report* (129-156) London: NatCen Social Research.
- Freeman, G. and Kessler, A. (2008). Political Economy and Migration Policy. *Journal of Ethnic and Migration Studies*, 34(4): 655-678.
- Freeman, G. P. (1979). *Immigrant Labor and Racial Conflict in Industrial Societies*. Princeton, NJ: Princeton University Press.
- Freeman, G. P. (1992). Migration Policy and Politics in the Receiving States. *International Migration Review*, 26(4): 1144-1167.
- Freeman, G. P. (1992). The Consequences of Immigration Policies for Immigrant Status: A British and French Comparison. In Messina, A., Fraga, L., Rhodebeck, L. and Wright, F. (Eds.), *Ethnic and Racial Minorities in Advanced Industrial Democracies*. New York, NY: Greenwood Press.
- Freeman, G. P. (1994). Can Liberal States Control Unwanted Immigration? *Annals of the American Academy of Political and Social Science*, 534: 17-30.
- Freeman, G. P. (1995a). Modes of Immigration Politics in Liberal Democratic States. *International Migration Review*, 29(4): 881-902.
- Freeman, G. P. (1995b). Rejoinder. *International Migration Review*, 29(4): 909-913.

Freeman, G. P. (1998). The Decline of Sovereignty? Politics and Immigration Restriction in Liberal States. In Joppke, C. (Ed.), *Challenge to the Nation-State: Immigration in Western Europe and the United States* (86-107). Oxford: Oxford University Press.

Freeman, G. P. (2001). Client Politics or Populism: Immigration Reform in the United States. In Guiraudon, V. and Joppke, C. (Eds.), *Controlling a New Migration World* (65-96). Routledge.

Freeman, G. P. (2002). Winners and Losers: Politics and the Costs and Benefits of Migration. In Messina, A. M. (Ed.), *Western European Immigration and Immigration Policy* (77-96). Westport, CT: Praeger.

Freeman, G. P. (2004). Commentary. In Cornelius, W., Tsuda, T., Martin, P. and Hollifield, J. F. (Eds.), *Controlling Immigration: A Global Perspective (2nd Edition)* (334-337). Stanford, CA: Stanford University Press.

Freeman, G. P. (2006a). Dis-Aggregating Immigration Policy: The Politics of Skilled Labour Recruitment in the USA. In Smith, P. M. and Favell, A. (Eds.), *The Human Face of Global Mobility* (103-130). New Brunswick, NJ: Transaction Press.

Freeman, G. P. (2006b). National Models, Policy Types, and the Politics of Immigration in Liberal Democracies. *West European Politics*, 29(2): 227-247.

Freeman, G. P. (2010). Can Comprehensive Immigration Reform Be Both Liberal and Democratic? *Sociology*, 47: 102-106.

Freeman, G. P. (2011). Comparative Analysis of Immigration Politics: A Retrospective. *American Behavioral Scientist*, 55(12): 1541-1560.

Freeman, G. P. and Betts, K. (1992). The Politics of Interests and Immigration Policy-making in Australia and the United States. In Freeman, G. and Jupp, J. (Eds.), *Nations of Immigrants* (72-88). Melbourne: Oxford University Press.

Freeman, G. P. and Birrell, B. (2001). Divergent Paths of Immigration Politics in the United States and Australia. *Population and Development Review*, 27(3): 525-551.

Freeman, G. P. and Hill, D. K. (2004). Disaggregating Immigration Policy: The Politics of Skilled Labor Recruitment in the U.S.. *Knowledge, Technology, & Policy*, 19(3): 7-21.

Bibliography

- Gallup, I. (2015). *150 Million Adults Worldwide Would Migrate to the U.S.*. *Gallup.com*. Retrieved 27 August 2015, from <http://www.gallup.com/poll/153992/150-million-adults-worldwide-migrate.aspx>
- Gamble, A. (1990). Theories of British Politics. *Political Studies*, 38: 404-420.
- Gamson, W. A. (1968). *Power and Discontent*. Homewood, Ill.: Dorsey Press.
- Garden Court Chambers (2015). *Garden Court Chambers* [online]. Retrieved 28 September 2016, from <https://www.gardencourtchambers.co.uk/barrister/adrian-berry/>
- Geddes, A. (2000). Thin Europeanisation: The Social Rights of Migrants in an Integrating Europe. In Bommes, M. and Geddes, A. (Eds.), *Immigration and Welfare: Challenging the Borders of the Welfare State* (205-221). London and New York: Routledge.
- Geddes, A. (2005). Getting the best of both worlds? Britain, the EU and migration policy. *International Affairs*, 81(4): 723-740.
- Geddes, A. (2008). Il rombo dei cannoni? Immigration and the Centre-Right in Italy. *Journal of European Public Policy*, 15(3): 349-366.
- Geertz, C. (1973). *The Interpretation of Cultures*. New York: Basic Books.
- Genographic Project, (2015). *The Human Journey: Migration Routes*. Retrieved 27 August 2015, from <https://genographic.nationalgeographic.com/human-journey/>
- Gerring, J. (2007). Is There a (Viable) Crucial-Case Method?. *Comparative Political Studies*, 40(3): 231-253.
- Giddens, A. (1985). *The Nation-State and Violence*. Cambridge: Polity.
- Gimpel, J. and Edwards, J. (1999). *The Congressional Politics of Immigration Reform*. Boston, MA: Allyn and Bacon.
- Giugni, M. and Passy, F. (2006). Influencing Migration Policy from Outside: The Impact of Migrant, Extreme-Right, and Solidarity Movements. In Giugni, M. and Passy, F. (Eds.), *Dialogues on Migration Policy* (193-213). Lanham, MD: Lexington Books.
- Giugni, M. and Passy, F. (Eds.) (2006). *Dialogues on Migration Policy*. Lanham, MD: Lexington Books.

Giugni, M., McAdam, D. and Tilly, C. (Eds.) (1999). *How Social Movements Matter*. Minneapolis, MI: University of Minnesota Press.

Godson, D. (2006). *How the immigration barrier rose*. *The Times*, 10 June.

Goffman, E. (1959). *The Presentation of Self in Everyday Life*. Harmondsworth: Penguin.

Goldin, C. (1994). The Political Economy of Immigration Restriction in the United States, 1890-1921. In Goldin, C. and Libecap, G. D. (Eds.), *The Regulated Economy: A Historical Approach to Political Economy* (223-258). Chicago: University of Chicago Press.

Goldin, C. and Libecap, G. D. (Eds.) (1994). *The Regulated Economy: A Historical Approach to Political Economy*. Chicago: University of Chicago Press.

Gonzalez, J. G. and Kamdar, N. (2000). Do Not Give Me Your Tired, Your Poor! Determinants of Legislator Voting on Immigration Issues. *Eastern Economic Journal*, 26: 127-143.

Goodwin-Gill, G. S. (2014). *Deprivation of Citizenship resulting in Statelessness and its Implications in International Law*.

Gorz, A. (1970). Immigrant Labor. *New Left Review*, 61.

GOV.UK. (2016). About - Migration Advisory Committee [online]. Retrieved 28 September 2016, from <https://www.gov.uk/government/organisations/migration-advisory-committee/about>

Gower, M., Wilson, W., Powell, T., Edmonds, T. and Butcher, L. (2013). House of Commons Library Immigration Bill Research Paper. London: House of Commons.

Green, L. (2016a). A summary history of immigration to Britain. *Migration Watch UK* [online]. Retrieved 27 September 2016, from <http://www.migrationwatchuk.org/briefing-paper/6.1>

Green, L. (2016b). The Illegal Migrant Population in the UK. *Migration Watch UK* [online]. Retrieved 27 September 2016, from <http://www.migrationwatchuk.org/briefing-paper/190>

- Green-Pedersen, C. and Odsmalm, P. (2008). Going Different Ways? Right-Wing Parties and the Immigrant Issue in Denmark and Sweden. *Journal of European Public Policy*, 15(3): 367-381.
- Griffith, J. A. G. (1970). Legislation. In Hanson, A. H. and Crick, B. (Eds.), *The Commons in Transition*. London: Fontana.
- Griffith, J. A. G. (1974). *Parliamentary Scrutiny of Government Bills*. London: Allen & Unwin.
- Grimston, J. and Summers, H. (2014). Immigration home truth sinks minister; The Tory who championed vans telling migrants to 'go home' has resigned over his cleaner. *The Times*, 9 February.
- Gudbrandsen, F. (2011). Er Pressen en Politisk Aktør i Familieinnvandringspolitikken? *Nytt Norsk Tidsskrift*, 4: 379-383.
- Gudbrandsen, F. (2012). *Explaining Scandinavian Immigration Policy, 1985-2010: Parties, Press, and Public Opinion*. University of Bergen: PhD Thesis.
- Guiraudon, V. (1997). *Policy Change Behind Gilded Doors? Explaining the Evolution of*
- Guiraudon, V. (1998a). Citizenship Rights for Non-Citizens: France, Germany, and the Netherlands. In Joppke, C. (Ed.), *Challenge to the Nation-State: Immigration in Western Europe and the United States* (272-318). Oxford: Oxford University Press.
- Guiraudon, V. (1998b). Third Country Nationals and European Law: Obstacles to Rights' Expansion. *Journal of Ethnic and Migration Studies*, 24(4): 657-674
- Guiraudon, V. (2000). European Integration and Migration Policy: Vertical Policy-Making as Venue Shopping. *Journal of Common Market Studies*, 38(2): 251-71.
- Guiraudon, V. (2001a). European Courts and Foreigners' Rights: A Comparative Study of Norms Diffusion. *International Migration Review*, 34(4): 1088-1125.
- Guiraudon, V. (2001b). De-Nationalizing Control: Analyzing State Responses to Constraints on Migration Control. In Guiraudon, V. and Joppke, C. (Eds.), *Controlling a New Migration World* (31-64). London: Routledge.

Guiraudon, V. (2002). The Marshallian Triptych Reordered: The Role of Courts and Bureaucracies in Furthering Migrants' Social Rights. In Bommers, M. and Geddes, A. (Eds.), *Immigration and Welfare: Challenging the Borders of the Welfare State* (72-89). London and New York: Routledge.

Guiraudon, V. (2003). The Constitution of a European Immigration Policy Domain: A Political Sociology Approach. *Journal of European Public Policy*, 10(2): 263-282.

Guiraudon, V. and Joppke, C. (Eds.) (2001). *Controlling a New Migration World*. London and New York: Routledge.

Guiraudon, V. and Lahav, G. (2000). A Reappraisal of the State Sovereignty Debate: The Case of Migration Control. *Comparative Political Studies*, 33(2): 163-195.

Gurowitz, A. (1999). Mobilizing International Norms: Domestic Actors, Immigrants, and the Japanese State. *World Politics*, 51(3): 413-445.

Habermas, J. (1984). *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society*. Boston, MA: Beacon Press.

Habermas, J. and MacCarthy, T. (1976). *Legitimation crisis*. London: Heinemann Educational.

Häge, F. M. and Kaeding, M. (2007). Reconsidering the European Parliament's Legislative Influence: Formal vs. Informal Procedures. *Journal of European Integration*, 29: 341-361.

Hainmueller, J. and Hopkins, D. J. (2014). Public Attitudes Toward Immigration. *Annual Review of Political Science*, 17: 225-249.

Hall, M. (2013). Miliband: I admit immigration is too high (bit late for that, Ed). *Daily Express*, 6 March.

Hall, P. A. and Taylor, R. C. (1996). Political Science and the Three New Institutionalisms. *Political Studies*, 44(5): 936-957.

Hall, P., Land, H., Parker, R. and Webb, A. (1975). *Change, Choice, and Conflict in Social Policy*. London: Heinemann.

Hammar, T. (Ed.) (1985). *European Immigration Policy: A Comparative Study*. Cambridge: Cambridge University Press.

Bibliography

Hampshire, J. (2005). *Citizenship and Belonging: Immigration and the Politics of Demographic Governance in Postwar Britain*. London: Palgrave Macmillan.

Hampshire, J. (2013). *The Politics of Immigration: Contradictions of the Liberal State*. Cambridge: Polity.

Hampshire, J. and Bale, T. (2014). New Administration, New Immigration Regime: Do Parties Matter After All? A UK Case Study. *West European Politics*, 38(1): 145-166.

Haney López, I. (2014). *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class*. Oxford: Oxford University Press.

Hansard (1991). HC Deb 2 July 1991, volume 194, column 167. London: House of Commons.

Hansard (1995). HC Deb 20 November 1995, volume 267, column 335. London: House of Commons.

Hansard (2013). Backbench Business Committee on “Immigration (Bulgaria and Romania)”. HC Deb 19 December 2013, column 311WH. London: House of Commons.

Hansard (2013). Backbench Business Committee on “Immigration (Bulgaria and Romania)”. HC Deb 19 December 2013, column 340WH. London: House of Commons.

Hansard (2013). Backbench Business Committee on “Immigration (Bulgaria and Romania)”. HC Deb 19 December 2013, column 342WH. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 8. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 11. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 14. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 17. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 20. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 34. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 35. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 37. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 43-44. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 46-47. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 49. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 50. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 60. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 61. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 71. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 72. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 74. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 75. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 76. London: House of Commons.

Bibliography

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 29 October 2013, column 82. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 87. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 90. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 91. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 97. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 102. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 103. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 104. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 111. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 112. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 31 October 2013, column 116. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 5 November 2013, column 151. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 5 November 2013, column 176. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 5 November 2013, column 205. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 5 November 2013, column 207. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 19 November 2013, column 371. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 19 November 2013, column 397. London: House of Commons.

Hansard (2013). Immigration Bill Commons Public Bill Committee. HC Deb 19 November 2013, column 402. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 156. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 157. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 159. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 172. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 176. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 179. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 185. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 186. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 186-188. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 190. London: House of Commons.

Bibliography

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 191. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 196. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 199. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 201. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 204. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 205. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 205-206. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 209. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 216. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 217. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 220. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 224. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 229. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 234. London: House of Commons.

Hansard (2013). Immigration Bill Commons Second Reading. HC Deb 22 October 2013, column 254. London: House of Commons.

Hansard (2013). UK Border Agency. HC Deb 26 March 2013, column 1500. London: House of Commons.

Hansard (2013). UK Border Agency. HC Deb 26 March 2013, column 1502. London: House of Commons.

Hansard (2014). Immigration Bill Commons Ping Pong. HC Deb 7 May 2014, column 198. London: House of Commons.

Hansard (2014). Immigration Bill Commons Ping Pong. HC Deb 7 May 2014, column 204. London: House of Commons.

Hansard (2014). Immigration Bill Commons Ping Pong. HC Deb 7 May 2014, column 207. London: House of Commons.

Hansard (2014). Immigration Bill Commons Ping Pong. HC Deb 7 May 2014, column 211. London: House of Commons.

Hansard (2014). Immigration Bill Commons Report. HC Deb 30 January 2014, column 1040. London: House of Commons.

Hansard (2014). Immigration Bill Commons Report. HC Deb 30 January 2014, column 1056. London: House of Commons.

Hansard (2014). Immigration Bill Commons Report. HC Deb 30 January 2014, column 1079. London: House of Commons.

Hansard (2014). Immigration Bill Commons Report. HC Deb 30 January 2014, column 1096. London: House of Commons.

Hansard (2014). Immigration Bill Lords Committee 2. HL Deb 5 March 2014, column 1394. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 3. HL Deb 10 March 2014, column 1608. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 3. HL Deb 10 March 2014, column 1609. London: House of Lords.

Bibliography

Hansard (2014). Immigration Bill Lords Committee 3. HL Deb 10 March 2014, column 1611. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 3. HL Deb 10 March 2014, column 1615. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 3. HL Deb 10 March 2014, column 1652. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 4. HL Deb 12 March 2014, column 1812. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 5. HL Deb 17 March 2014, column 41. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 5. HL Deb 17 March 2014, column 48. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 5. HL Deb 17 March 2014, column 49. London: House of Lords.

Hansard (2014). Immigration Bill Lords Committee 6. HL Deb 19 March 2014, column 182. London: House of Lords.

Hansard (2014). Immigration Bill Lords Ping Pong. HL Deb 12 May 2014, column 1667. London: House of Lords.

Hansard (2014). Immigration Bill Lords Ping Pong. HL Deb 12 May 2014, column 1673. London: House of Lords.

Hansard (2014). Immigration Bill Lords Ping Pong. HL Deb 12 May 2014, column 1677. London: House of Lords.

Hansard (2014). Immigration Bill Lords Report 1. HL Deb 1 April 2014, column 1200. London: House of Lords.

Hansard (2014). Immigration Bill Lords Report 1. HL Deb 3 April 2014, column 1059. London: House of Lords.

Hansard (2014). Immigration Bill Lords Report 3. HL Deb 7 April 2014, column 866. London: House of Lords.

Hansard (2014). Immigration Bill Lords Report 3. HL Deb 7 April 2014, column 1169. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 416. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 419. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 420. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 436. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 437. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 452. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 455. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 460. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 462. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 462. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 464. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 472. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 475. London: House of Lords.

Bibliography

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 476. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 484. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 485. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 490. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 492. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 497. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 499. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 503. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 508. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 510. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 511. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 515. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 518. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 519. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 520. London: House of Lords.

Hansard (2014). Immigration Bill Lords Second Reading. HL Deb 10 February 2014, column 523. London: House of Lords.

Hansen, R. (1999). The Kenyan Asians, British politics, and the Commonwealth Immigrants Act 1968. *Historical Journal*, 42: 809-34.

Hansen, R. (2000). *Citizenship and Immigration in Post-War Britain: The Institutional Origins of a Multicultural Nation*. Oxford: Oxford University Press.

Hansen, R. (2002). Globalization, Embedded Realism, and Path Dependence: The Other Immigrants to Europe. *Comparative Political Studies*, 35(3): 259-283.

Hanson, G. and Spilimbergo, A. (2001). Political Economy, Sectoral Shocks and Border Enforcement. *Canadian Journal of Economics*, 34(3): 612-638.

Hardcastle, L., Parkin, A., Simmons, A. and Suyama, N. (1994). The Making of Immigration and Refugee Policy: Politicians, Bureaucrats and Citizens. In Adelman, H., Borowski, A., Burstein, M. and Foster, L. (Eds.), *Immigration and Refugee Policy: Australia and Canada Compared* (95-124). Carlton: Melbourne University Press.

Hardin, R. (1982). *Collective Action*. Baltimore, MD: Johns Hopkins University Press.

Hardin, R. (1995). *One for All: The Logic of Group Conflict*. Princeton, NJ: Princeton University Press.

Harris, J. (2013). The Tories are creating a hostile environment – not just for migrants. *The Guardian* [online]. Retrieved 8 August 2017, from <https://www.theguardian.com/commentisfree/2013/oct/13/tories-hostile-not-just-immigrants>

Hartigan, K. (1992). Matching Humanitarian Norms With Cold, Hard Interests: The Making of Refugee Policies in Mexico and Honduras, 1980-89. *International Organization*, 46(3): 709-730.

Harvey, W. S. (2010). Methodological Approaches for Interviewing Elites. *Geography Compass*, 4(3): 193-205.

Bibliography

- Hatton, T. (2014). *Public opinion, immigration, and the recession* / VOX, CEPR's Policy Portal. (2016). Voxeu.org. Retrieved 27 September 2016, from <http://voxeu.org/article/public-opinion-immigration-and-recession>
- Haus, L. (2002). *Unions, Immigration, and Internationalization: New Challenges and Changing Coalitions in the United States and France*. New York: Palgrave Macmillan.
- Hawkins, F. (1989). *Critical Years in Immigration: Canada and Australia Compared*. Montreal: McGill-Queen's University Press.
- Hawkins, F. (1998). *Canada and Immigration: Public Policy and Public Concern (2nd Edition)*. Montreal: McGill-Queen's University Press.
- Herbert, U. (1990). *A History of Foreign Labor in Germany, 1880-1980*. Ann Arbor: The University of Michigan Press.
- Herod, A. (1999). Reflections on Interviewing Foreign Elites: Praxis, Positionality, Validity, and the Cult of the Insider. *Geoforum*, 30: 313-327.
- Higham, J. (1955). *Strangers in the Land: Patterns of American Nativism, 1860-1925*. New Brunswick: Rutgers University Press.
- Hillier, M. (2013). *Memorandum from Meg Hillier MP (P 28, 2013-14)*. Written evidence submitted to the Procedure Committee for its inquiry into the Committee of Selection and membership of general committees.
- Hinnfors, J., Spehar, A. and Bucken-Knapp, G. (2012). The Missing Factor: Why Social Democracy Can Lead to Restrictive Immigration Policy. *Journal of European Public Policy*, 19(4): 585-603.
- Hix, S. and Noury, A. (2007). Politics, Not Economic Interests: Determinants of Migration Policies in the European Union. *International Migration Review*, 41(1): 182-205.
- HM Government (2008). *Code of Practice on Consultation*. London: Better Regulation Executive Department for Business, Enterprise and Regulatory Reform.
- Hoffmann-Nowotny, H.-J. (1985). Switzerland. In Hammar, T. (Ed.), *European Immigration Policy: A Comparative Study* (206-236). Cambridge: Cambridge University Press.

Hollifield, J. F. (1986). Immigration Policy in France and Germany: Outputs Versus Outcomes. *Annals of the American Academy of Political and Social Science*, 485(May): 113-128.

Hollifield, J. F. (1992a). *Immigrants, Markets and States: The Political Economy of Post-War Europe*. Cambridge, MA: Harvard University Press.

Hollifield, J. F. (1992b). Migration and International Relations: Cooperation and Control in the European Community. *International Migration Review*, 26(2): 568-595.

Hollifield, J. F. (2000). Immigration and the Politics of Rights: The French Case in Comparative Perspective. In Bommers, M. and Geddes, A. (Eds.), *Immigration and Welfare: Challenging the Borders of the Welfare State* (108-131). London and New York: Routledge.

Hollifield, J. F. (2004a). Immigration and Republicanism in France: The Hidden Consensus. In Cornelius, W., Martin, P. and Hollifield, J. (Eds.), *Controlling Immigration: A Global Perspective (2nd Edition)*. Stanford, CA: Stanford University Press.

Hollifield, J. F. (2004b). The Emerging Migration State. *International Migration Review*, 38(3): 885-912.

Hollifield, J. F., Hunt, V. F. and Tichenor, D. (2008). The Liberal Paradox: Immigrants, Markets and Rights in the United States. *SMU Law Review*, 61: 67-98.

Hollifield, J. F., Martin, P. and Orrenius, P. (Eds.) (2014). *Controlling Immigration: A Global Perspective (3rd Edition)*. Stanford, CA: Stanford University Press.

Holsti, O. R. (1992). Public Opinion and Foreign Policy: Challenges to the Almond-Lippmann Consensus. *Mershon Series: Research Programs and Debates. International Studies Quarterly*, 36(4): 439-466.

Home Office (1997). Control of Immigration: Statistics, United Kingdom 1997, Cm 4033. London: Stationery Office.

Home Office (2013a). *The Queen's Speech 2013 – Contents*. London: Home Office.

Home Office (2013b). *Immigration Bill Factsheet: Overview of the Bill*. London: Home Office.

Bibliography

Home Office (2013c). *Controlling Immigration – Regulating Migrant Access to Health Services in the UK: Consultation document*. London: Home Office.

Home Office (2013d). *Controlling Immigration – Regulating Migrant Access to Health Services in the UK: Results of the public consultation*. London: Home Office.

Home Office (2013e). *Tackling illegal immigration in privately rented accommodation: Consultation document*. London: Home Office.

Home Office (2013f). *Tackling illegal immigration in privately rented accommodation: The Government's response to the consultation*. London: Home Office.

Home Office (2013g). *Strengthening and simplifying the civil penalty scheme to prevent illegal working: Consultation document*. London: Home Office.

Home Office (2013h). *Strengthening and simplifying the civil penalty scheme to prevent illegal working: Results of the public consultation*. London: Home Office.

Home Office (2013i). *Fees and charging; Immigration and visas: Consultation Document*. London: Home Office.

Home Office (2014). *Immigration fees and charging: Consultation 2013 – response*. London: Home Office.

Hope, C. (2013). Bill to force landlords to vet migrant tenants is scaled back. *The Daily Telegraph*, 27 May 2013.

Hope, C. and Kirkup, J. (2014). *Samantha Cameron's role in Nepalese nanny's passport*. *Telegraph.co.uk*. Retrieved 27 August 2015, from <http://www.telegraph.co.uk/news/politics/10684247/Samantha-Camersons-role-in-Nepalese-nannys-passport.html>

Hossay, P. (2002). Country Profiles. In Schain, M., Zolberg, A. and Hossay, P. (Eds.), *Shadows over Europe: The Development and Impact of the Extreme Right in Western Europe* (316-345). New York: Palgrave Macmillan.

House of Commons (2011). *The Standing Orders of the House of Commons*. London: The Stationery Office Limited.

House of Commons (2012). *The Work of the UK Border Agency*. London: The Stationery Office Limited.

House of Commons (2013a). *The Work of the UK Border Agency (October–December 2012)*. London: The Stationery Office Limited.

House of Commons (2013b). Ending of transitional restrictions for Bulgarian and Romanian workers [online]. Retrieved 3 September 2014, from <http://researchbriefings.files.parliament.uk/documents/SN06606/SN06606.pdf>

Huhne, C. (2009). Chris Huhne: The cash-for-influence scandal is evidence that the House of Lords requires root and branch reform. *the Guardian*. Retrieved 9 August 2017, from <https://www.theguardian.com/commentisfree/2009/jan/27/lords-labour>

Huppert, J. L. (2005). *Studies on genomic G-quadruplexes*. University of Cambridge: PhD Thesis.

Huysmans, J. (2000). The European Union and the Securitization of Migration. *Journal of Common Market Studies*, 38(5): 751-777.

Ipsos MORI (2013a). Ipsos MORI | Trend | Issues Index: 2007 onwards [online]. Retrieved 21 February 2013, from <https://www.ipsos-mori.com/researchpublications/researcharchive/2905/Issues-Index-2012-onwards.aspx>

Ipsos MORI (2013b). Ipsos MORI | Trend | Issues Index: 1997-2006 [online].

Ipsos MORI (2013c). Ipsos MORI | Trend | Attitudes Towards Immigration [online].

IPU PARLINE database: Structure of parliaments. (2017). Ipu.org. Retrieved 4 August 2017, from <http://www.ipu.org/parline-e/ParliamentsStructure.asp?REGION=All&LANG=ENG>

Ireland, P. (1994). *The Policy Challenge of Ethnic Diversity: Immigrant Politics in France and Switzerland*. Cambridge, MA: Harvard University Press.

Ireland, P. (2006). Institutions, Political Opportunity Structures, and the Shaping of Migration Policies in Western Europe. In Giugni, M. and Passy, F. (Eds.), *Dialogues on Migration Policy* (137-155). Lanham, MD: Lexington Books.

Bibliography

- Jackson, P. I. and Parkes, R. (2006). Globalization and the Secularization of Immigration Policy: Competing Influences on Immigrant Integration Policy in Germany, France, Britain and the United States. *Human Architecture: Journal of the Sociology of Self-Knowledge*, 4(3): 131-146.
- Jacobson, D. (1996). *Rights Across Borders: Immigration and the Decline of Citizenship*. Baltimore: Johns Hopkins University Press.
- Jacobson, D. and Ruffer, G. B. (2003). Courts Across Borders: The Implications of Judicial Agency for Human Rights and Democracy. *Human Rights Quarterly*, 25(1): 74-92.
- Jacobson, D. and Ruffer, G. B. (2006). Social Relations on a Global Scale: The Implications for Human Rights and for Democracy. In Giugni, M. and Passey, F. (Eds.), *Dialogues on Migration Policy* (25-44).
- Janoski, T. and Wang, F. (2006). The Politics of Immigration and National Integration. In Janoski, T., Alford, R., Hicks, A. and Schwartz, M. (Eds.), *The Handbook of Political Sociology: States, Civil Societies, and Globalization* (630-654). New York: Cambridge University Press.
- Jennings, W. (2009). The Public Thermostat, Political Responsiveness and Error-Correction: Border Control and Asylum in Britain, 1994-2007. *British Journal of Political Science*, 39(4): 847-870.
- Jeong, G. H. (2013). Congressional Politics of US Immigration Reforms: Legislative Outcomes Under Multidimensional Negotiations. *Political Research Quarterly*, 66(3): 600-614.
- Jones, M. A. (1960). *American Immigration*. Chicago: University of Chicago Press.
- Joppke, C. (1996). Multiculturalism and Immigration: A Comparison of the United States, Germany, and Great Britain. *Theory and Society*, 25(4): 449-500.
- Joppke, C. (1998a). Why Liberal States Accept Unwanted Immigration. *World Politics*, 50(2): 266-293.
- Joppke, C. (1998b). Immigration Challenges the Nation-State. In Joppke, C. (Ed.), *Challenge to the Nation-State: Immigration in Western Europe and the United States* (5-47). Oxford: Oxford University Press.

- Joppke, C. (1998c). Asylum and State Sovereignty: A Comparison of the United States, Germany, and Britain. In Joppke, C. (Ed.), *Challenge to the Nation-State: Immigration in Western Europe and the United States* (109-152). Oxford: Oxford University Press.
- Joppke, C. (1999). *Immigration and the Nation-State: The United States, Germany and Great Britain*. Oxford: Oxford University Press.
- Joppke, C. (2001). The Legal-Domestic Sources of Immigrant Rights: The United States, Germany, and the European Union. *Comparative Political Studies*, 34(4): 339-366.
- Joppke, C. (Ed.) (1998d). *Challenge to the Nation-State: Immigration in Western Europe and the United States*. Oxford: Oxford University Press.
- Joppke, C. and Marzal, E. (2004). Courts, The New Constitutionalism and Immigrant Rights: The Case of the French Conseil Constitutionnel. *European Journal of Political Research*, 43(6): 823-844.
- Justice (1993). *The Primary Purpose Rule: A Rule with No Purpose*. London: Justice.
- Kaldor, M. and Vejvoda, I. (1997). Democratization in Central and East European Countries. *International Affairs*, 73(1): 59-82.
- Kay, D. and Miles, R. (1992). *Refugees or Migrant Workers: European Volunteer Workers in Britain 1946–1951*. London: Routledge.
- Khomami, N. (2015). UK population at record high, with net migration the biggest driver. *The Guardian* [online]. Retrieved 30 September 2015, from <http://www.theguardian.com/uk-news/2015/jun/25/uk-population-at-record-high-with-net-migration-the-biggest-driver>
- Kicingier, A. and Koryś, I. (2011). The Case of Poland. In Zincone, G., Penninx, R. and Borkert, M. (Eds.), *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present* (347-376). Amsterdam: Amsterdam University Press.
- Kimber, R. and Richardson, J. J. (1968). Specialization and Parliamentary Standing Committees. *Political Studies*, 16(1): 97-101.
- King, A. (2007). *The British Constitution*. Oxford: Oxford University Press.
- King, A. and Crewe, I. (2013). *The Blunders of Our Governments*. London: Oneworld.

Kirkup, J and Winnett, R (2012). Theresa May interview: 'We're going to give illegal migrants a really hostile reception'. *The Telegraph* [online], 25 May. Retrieved 2 September 2014, from <http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html>

Knowles, J. B. (2015). *The Abolition of the Death Penalty in the United Kingdom: How It Happened and Why It Still Matters*. London: The Death Penalty Project.

Koopmans, R. and Statham, P. (1999). Challenging the Liberal Nation-State? Post-Nationalism, Multiculturalism and the Collective Claims Making of Migrants and Ethnic Minorities in Britain and Germany. *American Journal of Sociology*, 105(3): 652-696.

Koopmans, R. and Statham, P. (2000). Migration and Ethnic Relations as a Field of Political Contention: An Opportunity Structure Approach. In Koopmans, R. and Statham, P. (Eds.), *Challenging Immigration and Ethnic Relations Politics: Comparative European Perspectives* (13-56). Oxford: Oxford University Press.

Korris, M. (2011). Standing up for scrutiny: How and why parliament should make better law. *Parliamentary Affairs*, 64(3): 564-574.

Koslowski, R. (1998). EU Migration Regimes, Established and Emergent. In Joppke, C. (Ed.), *Challenge to the Nation-State: Immigration in Western Europe and the United States* (153-190). Oxford: Oxford University Press.

Kraler, A. (2011). The Case of Austria. In Zincone, G., Penninx, R. and Borkert, M. (Eds.), *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present* (21-59). Amsterdam: Amsterdam University Press.

Kreppel, A. (1999). What Affects the European Parliament's Legislative Influence? An Analysis of the Success of EP Amendments. *Journal of Common Market Studies*, 37: 521-537.

Kreppel, A. (2002). Moving Beyond Procedure: An Empirical Analysis of European Parliament Legislative Influence. *Comparative Political Studies*, 35(7): 784-813.

Kreppel, A. (2014). Typologies and Classifications. In Martin, S., Saalfeld, T. and Strom, K. (Eds.), *The Oxford Handbook of Legislative Studies* (82-100). Oxford: Oxford University Press.

Kriese, H. (2006). Political Process as the Key Determinant of Immigration Policy. In Giugni, M. and Passy, F. (Eds.), *Dialogues on Migration Policy* (215-222). Lanham, MD: Lexington Books.

Kurthen, H. (1995). Germany at the Crossroads: National Identity and the Challenges of Immigration. *International Migration Review*, 29(4): 914-938.

Lahav, G. (2004a). *Immigration and Politics in the New Europe: Reinventing Borders*. Cambridge: Cambridge University Press.

Lahav, G. (2004b). Public Opinion Toward Immigration in the European Union: Does it Matter? *Comparative Political Studies*, 37(10): 1151-1183.

Lahav, G. and Guiraudon, V. (2006). Actors and Venues in Immigration Control: Closing the Gap Between Political Demands and Policy Outcomes. *West European Politics*, 29(2): 201-223.

Lavenex, S. (2001). The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies. *JCMS: Journal of Common Market Studies*, 39(5): 851-874.

Lavenex, S. (2006). Shifting up and out: The foreign policy of European immigration control. *West European Politics*, 29(2): 329-350.

Layton-Henry, Z. (1981). *A Report on British Immigration Policy Since 1945*. Warwick: University of Warwick.

Layton-Henry, Z. (1984). *The Politics of Race in Britain*. London: Allen and Unwin.

Layton-Henry, Z. (1985). Great Britain. In Hammar, T. (Ed.), *European Immigration Policy: A Comparative Study* (89-126). Cambridge: Cambridge University Press.

Layton-Henry, Z. (1990). *The Political Rights of Migrant Workers in Western Europe*. London: Sage.

Layton-Henry, Z. (1992). *The Politics of Immigration: Immigration, Race, and Race Relations in Post-War Britain*. Oxford: Blackwell.

Layton-Henry, Z. (1994). Britain: The Would-Be Zero-Immigration Country. In Cornelius, W., Martin, P. and Hollifield, J. F. (Eds.), *Controlling Immigration: A Global Perspective* (273-295). Stanford, CA: Stanford University Press.

Bibliography

- Lee, K. K. (1998). *Huddled Masses, Muddled Laws: Why Contemporary Immigration Policy Fails to Reflect Public Opinion*. Westport, CT: Praeger Publishers.
- Leeds.gov.uk (2015). *Leeds population* [online]. Retrieved 27 August 2015, from <http://www.leeds.gov.uk/council/Pages/Leeds-population.aspx>
- Legomsky, S. H. (1987). *Immigration and the Judiciary: Law and Politics in Britain and America*. Oxford: Oxford University Press.
- Leitner, H. (1995). International Migration and the Politics of Admission and Exclusion in Postwar Europe. *Political Geography*, 14(3): 359-78.
- LeMay, M. C. (2015). *Illegal Immigration: A Reference Handbook (2nd Edition)*. Santa Barbara, CA: ABC-CLIO.
- LeMay, M. C. (Ed.) (1989). *The Gatekeepers: Comparative Immigration Policy*. Praeger.
- Levi, M. (1997). A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis. In Lichbach, M. I. and Zuckerman, A. S. (Eds.), *Comparative Politics* (19-41). Cambridge: Cambridge University Press.
- Levy, M., Wright, M. and Citrin, J. (2016). Mass Opinion and Immigration Policy in the United States: Re-Assessing Clientelist and Elitist Perspectives. *Perspectives on Politics*, 14(3): 660-680.
- Liberal Democrats (2010). *Liberal Democrat Manifesto 2010*. London: Liberal Democrats.
- Lijphart, A. (1971). Comparative Politics and the Comparative Method. *American Political Science Review*, 65(3): 682-693.
- Lijphart, A. (1975). The Comparable Cases Strategy in Comparative Research. *Comparative Political Studies*, 8: 158-177.
- Lijphart, A. (1999). *Patterns of Democracy*. New Haven, CT: Yale University Press.
- Lijphart, A. (2012). *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. New Haven: Yale University Press.
- Lippmann, W. (1955). *Essays in the Public Philosophy*. Boston: Little, Brown.

Linz, J. J. with Miley, T. J. (2012). Cautionary and Unorthodox Thoughts About Democracy Today. In Chalmers, D. and Mainwaring, S. (Eds.), *Problems Confronting Contemporary Democracies: Essays in Honor of Alfred Stepan* (227-252). South Bend, IN: University of Notre Dame Press.

Little, A. (2012). New law to stop illegal migrants. *Express.co.uk*. Retrieved 27 August 2015, from <http://www.express.co.uk/news/uk/342215/New-law-to-stop-illegal-migrants>

Little, A. (2013a). 1-in-5 migrants heads to Britain; 566,000 end up here in just one year. *Daily Express*, 27 March.

Little, A. (2013b). Rebel MPs press for laws to limit new EU migrants. *Daily Express*, 6 December.

Loescher, G. and Scanlan, J. (1986). *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present*. New York: The Free Press.

Luckham, R., Kaldor, M. and Goetz, A.-M. (2000). *Democratic Institutions and Politics in Contexts of Inequality, Poverty, And Conflict: A Conceptual Framework*. IDS Working Paper 104, Brighton: IDS.

Luedtke, A. (2006). The European Union dimension: Supranational Integration, Free Movement of Persons, and Immigration Politics. In Parsons, C. A. and Smeeding, T. M. (Eds.), *Immigration and the Transformation of Europe* (419-441). Cambridge: Cambridge University Press.

MacDonald, I. and Webber, F. (2001). *MacDonald's Immigration Law and Practice (5th Edition)*. London: Reed Elsevier.

Macdonald, K. (2009). Day one: judges put power to the test. *TheTimes.co.uk*. Retrieved 9 August 2017, from <https://www.thetimes.co.uk/article/day-one-judges-put-power-to-the-test-3cvfw2p8rl2>

Mann, M. (1995). A Political Theory of Nationalism and Its Excesses. In Periwal, S. (Ed.), *Notions of Nationalism* (44-64). Budapest: Central European University.

March, J. G. and Olsen, J. P. (1983). The New Institutionalism: Organizational Factors in Political Life. *American Political Science Review*, 78(3): 734-749.

Bibliography

- Marshall, A. (1973). *The Import of Labor: The Case of the Netherlands*. Rotterdam: Rotterdam University Press.
- Marthaler, S. (2008). Nicolas Sarkozy and the Politics of French Immigration Policy. *Journal of European Public Policy*, 15(3): 382-397.
- Martin, D. (1989). Effects of International Law on Migration Policy and Practice: The Uses of Hypocrisy. *International Migration Review*, 33(3): 547-578.
- Martin, L. W. and Vanberg, G. (2011). *Parliaments and Coalitions: The Role of Legislative Institutions in Multiparty Governance*. Oxford: Oxford University Press.
- Martin, P. (2003). *Bordering on Control*. Geneva, Switzerland: International Organization for Migration.
- Martiniello, M. (2006). The New Migratory Europe: Towards a Proactive Immigration Policy?. In Parsons, C. A. and Smeeding, T. M. (Eds.), *Immigration and the Transformation of Europe* (298-326). Cambridge: Cambridge University Press.
- Marx, K. (1973). *Grundrisse: Foundations of the Critique of Political Economy*. Harmondsworth: Penguin.
- Marx, K. (1976). *Capital. Vol. 1*. Harmondsworth: Penguin.
- Mason, R., Asthana, A. and O'Carroll, L. (2017). Parliament passes Brexit bill and opens way to triggering article 50. *The Guardian* [online]. Retrieved 8 August 2017, from <https://www.theguardian.com/politics/2017/mar/13/brexit-vote-article-50-eu-citizens-rights-lords-mps>
- Massey, D. S. and Taylor, J. E. (Eds.) (2004). *International Migration: Prospects and Policies in a Global Market*. Oxford: Oxford University Press.
- Massey, D. S., Arango, J., Hugo, G., Kouaouci, A. and Pellegrino, A. (1998). *Worlds in Motion: Understanding International Migration at the End of the Millennium*. Oxford: Clarendon Press.
- May, T. E. (1997). *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. London: Butterworth-Heinemann.

- Mayda, A. (2010). International Migration: a Panel Data Analysis of the Determinants of Bilateral Flows. *Journal of Population Economics*, 23: 1249-74.
- McCarthy, J. D. and Zald, M. N. (1977). Resource Mobilization and Social Movements: A Partial Theory. *American Journal of Sociology*, 82(6): 1212-1241.
- McGann, A. (2003). *Immigration and the Median Voter*. Paper presented at the Annual Meeting of the American Political Science Association, Philadelphia, 29 August-3 September.
- McGann, A. (2006). Social Choice and Comparing Legislatures: Constitutional Versus Institutional Constraints. *Journal of Legislative Studies*, 12: 443-461.
- McGuinness, F. (2010). *Social background of MPs*. London: House of Commons Library.
- McKinstry, L. (2012). *Tories fail to solve immigration crisis that blights Britain*. *Express.co.uk*. Retrieved 28 August 2015, from <http://www.express.co.uk/comment/columnists/leo-mckinstry/333097/Tories-fail-to-solve-immigration-crisis-that-blights-Britain>
- McLaughlin, E. and Muncie, J. (2001). *The SAGE Dictionary of Criminology*. Los Angeles, CA: SAGE.
- Menz, G. (2008). *The Political Economy of Managed Migration: Nonstate Actors, Europeanization, and the Politics of Designing Migration Policies*. Oxford: Oxford University Press.
- Messina, A. M. (2007). *The Logics and Politics of Post-WWII Migration to Western Europe*. Cambridge: Cambridge University Press.
- Messina, A. M. and Lahav, G. (2006). *The Migration Reader: Exploring Politics and Policies*. Boulder, CO and London: Lynne Rienner Press.
- Meyers, E. (2000). Theories of International Immigration Policy – A Comparative Analysis. *International Migration Review*, 34(4): 1245-1282.
- Meyers, E. (2004). *International Immigration Policy: A Theoretical and Comparative Analysis*. New York: Palgrave Macmillan.
- Mezey, M. L. (1979). *Comparative Legislatures*. Durham, NC: Duke University Press.

Migrationobservatory.ox.ac.uk (2015). *Round numbers and records: What do headline statistics tell us about migration?* / *The Migration Observatory*. Retrieved 27 August 2015, from <http://migrationobservatory.ox.ac.uk/commentary/round-numbers-and-records-what-do-headline-statistics-tell-us-about-migration>

MigrationWatch UK (2013) | Foreign citizens votes could critically affect outcome of 2015 election and EU referendum. [online] Migrationwatchuk.org. Retrieved 22 January 2015, from <http://www.migrationwatchuk.com/press-release/365>

MigrationWatch UK (2015). An independent, voluntary, non-political body concerned about the scale of immigration into the UK. [online] *Migrationwatchuk.org*. Retrieved 27 August 2015, from <http://www.migrationwatchuk.org/>

Miles, R. (1986). Labour Migration, Racism and Capital Accumulation in Western Europe since 1945. *Capital and Class*, 10(1): 49-86.

Miles, R. (1987). *Capitalism and Unfree Labour: Anomaly or Necessity?* London: Tavistock.

Miles, R. (1989). *Racism*. London: Routledge.

Miller, M. (1979). Reluctant Partnership: Foreign Workers in Franco-Algerian Relations, 1962-1979. *Journal of International Affairs*, 33(2): 219-238.

Miller, M. (1981). *Foreign Workers in Western Europe: An Emerging Political Force*. Praeger.

Milner, H. V. and Tingley, D. (2009). *The Economic and Political Influences on Immigration Policy in the U.S.*. Princeton University, mimeo.

Minkenberg, M. (2001). The Radical Right in Public Office: Agenda-Setting and Policy Effects. *West European Politics*, 24(4): 1-21.

Minkenberg, M. (2002). The New Radical Right in the Political Process: Interaction Effects in France and Germany. In Schain, M., Zolberg, A. and Hossay, P. (Eds.), *Shadows over Europe: The Development and Impact of the Extreme Right in Western Europe* (245-268). New York: Palgrave Macmillan.

Mitchell, C. (1989). International Migration, International Relations and Foreign Policy. *International Migration Review*, 23(3): 681-708.

Modernisation Select Committee (2006). *The Legislative Process*. First Report of Session 2005–2006, HC 1097.

Money, J. (1997). No Vacancy: The Political Geography of Immigration Control in Advanced Industrialized Countries. *International Organization*, 51(4): 685-720.

Money, J. (1999). *Fences and Neighbors: The Political Geography of Immigration Control*. Ithaca, NY: Cornell University Press.

Money, J. (2009). Comparative Immigration Policy. Retrieved 30 April 2013, from http://www.isacomps.com/info/samples/comparativeimmigrationpolicy_sample.pdf

Montesquieu, C. (1989). *The Spirit of the Laws* (1748). Translated and edited by Anne M. Kohler, Basia Carolyn Miller, and Harold Samuel Stone. Cambridge: Cambridge University Press.

Naím, M. (2002). On the Fence: Former INS Commissioner Doris Meissner on the Contradictions of Migration Policy in a Globalizing World. *Foreign Policy*, 129: 22-35.

National Audit Office (2012). *The UK Border Agency and Border Force: Progress in cutting costs and improving performance*. London. Retrieved 2 September 2014, from <https://www.nao.org.uk/report/%20the-uk-border-agency-and-border-force-progress-in-cutting-costs-and-improving-performance/>

National Landlords Association (2013). *Landlords.org.uk*. Retrieved 24 September 2013, from <http://www.landlords.org.uk/about-nla>

Ness, I. (2013). *The Encyclopedia of Global Human Migration*. Hoboken, NJ: Wiley-Blackwell.

Newton, I. (2010). *The Migration Ecology of Birds*. Amsterdam: Elsevier-Academic Press.

Nikolinakos, M. (1975). Notes Toward a General Theory of Migration in Late Capitalism. *Race and Class*, 17(1): 5-18.

Norton, P. (2013). *Parliament in British Politics (2nd Edition)*. Basingstoke: Palgrave Macmillan.

Oberschall, A. (1973). *Social Conflict and Social Movements*. Englewood Cliffs, NJ: Prentice-Hall.

Bibliography

Office for National Statistics (2014). *Statistical Bulletin: Annual Mid-year Population Estimates, 2013*. London: Office for National Statistics.

ons.gov.uk (2013). *Migration Statistics Quarterly Report, August 2013*. [online] Office for National Statistics. Retrieved 30 September 2016, from <http://webarchive.nationalarchives.gov.uk/20160105160709/http://ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/august-2013/index.html>

ons.gov.uk (2015). *Migration Statistics Quarterly Report, November 2014*. [online] Office for National Statistics. Retrieved 22 January 2015, from <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/november-2014/index.html> [Accessed 22 Jan. 2015].

Oxfam (2007). *Fair Play: Refugees and Asylum Seekers in Scotland: A Guide for Journalists*. Scotland: Oxfam.

Pak, K. T. (1994). *Politics of Immigration in Japan*. Paper presented at the Workshop on East Asia Politics, Economy, and Society, 1 June 1994.

Papademetriou, D. G. (1996). Book Review: Weiner, M., 1995, The Global Migration Crisis: Challenge to States and to Human Rights. *Population and Development Review*, 22(3): 569-573.

Parsons, C. A. and Smeeding, T. M. (Eds.) (2006). *Immigration and the Transformation of Europe*. Cambridge: Cambridge University Press.

Partos, R. and Bale, T. (2015). Immigration and Asylum Policy Under Cameron's Conservatives. *British Politics*, 10: 169-184.

Patrick, A. (2013). *Immigration Bill 2013 (Part 2): Briefing for House of Commons Second Reading*. London: Justice.

Patterson, S. C. and Mugan, A. (1999). Senates and the Theory of Bicameralism. In Patterson, S. C. and Mugan, A. (Eds.), *Senates: Bicameralism in the Contemporary World* (1-31). Columbus, OH: Ohio State University Press.

Paul, K. (1997). *Whitewashing Britain: Race and Citizenship in the Postwar Era*. Ithaca: Cornell University Press.

Perlmutter, T. (1996). Bringing Parties Back In: Comments on 'Modes of Immigration Politics in Liberal Democratic Societies'. *International Migration Review*, 30(1): 375-388.

Perlmutter, T. (2002). The Politics of Restriction: The Effect of Xenophobic Parties on Italian Immigration Policy and German Asylum Policy. In Schain, M., Hossay, P. and Zolberg, A. (Eds.), *Shadows over Europe: The Development and Impact of the Extreme Right in Western Europe* (269-297). London: Palgrave Macmillan.

Petras, E. M. (1981). The Global Labor Market in the Modern World Economy. In Kritz, M., Keely, C. B. and Tomasi, S. M. (Eds.), *Global Trends in Migration* (44-63). New York: Center for Migration Studies.

Pitel, L. (2013). Clegg drops amnesty proposal and talks tough on immigration. *The Times*, 23 March 2013.

Plato (2003). *The Last Days of Socrates*. Translated by Hugh Tredennick. London: Penguin Group.

Plato c. 380 BC (2000). *The Republic*. Cambridge Texts in the History of Political Thought, edited by G. R. F. Ferrari, translated by Tom Griffith. Cambridge: Cambridge University Press.

Przeworski, A., Stokes, S., and Manin, B. (1999). *Democracy, Accountability, and Representation*. Cambridge: Cambridge University Press.

Putnam, R. (2007). E Pluribus Unum: Diversity and Community in the Twenty-first Century, The 2006 Johan Skytte Prize Lecture. *Scandinavian Political Studies*, 30(2): 137-174.

Puwar, N. (1997). Reflections on Interviewing Women MPs. *Sociological Research Online*, 2(1), retrieved 23 January 2015, from <http://www.socresonline.org.uk/2/1/4.html>

R (Al-Jedda) v Secretary of State for Defence [2007] UKHL 58.

Reeve, C. D. C. (1998). *Aristotle: Politics*. Indianapolis: Hackett.

Rex, J. (1996). *Ethnic Minorities in the Modern Nation State: Working Papers in the Theory of Multiculturalism and Political Integration*. New York: Palgrave Macmillan.

Bibliography

- Rex, J. and Tomlinson, S. (1979). *Colonial Immigrants in a British City: A Class Analysis*. London: Routledge.
- Rhodes, R. A. W. (2000). Public Administration and Governance. In Pierre, J. (Ed.), *Debating Governance: Authority, Steering, and Democracy* (54-90). Oxford: Oxford University Press.
- Ribas-Mateos, N. (2004). How Can We Understand Immigration in Southern Europe?. *Journal of Ethnic and Migration Studies*, 30(6): 1045-1063.
- Richards, D. (1996). Elite Interviewing: Approaches and Pitfalls. *Politics*, 16(3): 199-204.
- Richmond, A. (1988). *Immigration and Ethnic Conflict*. Macmillan Press.
- Rienzo, C. (2016). *Characteristics and Outcomes of Migrants in the UK Labour Market*. Migration Observatory Briefing, COMPAS, University of Oxford, UK, January.
- Robertson, D. (2002). *The Routledge Dictionary of Politics (3rd Edition)*. London: Routledge.
- Robinson, N. (2014). What UKIP victory means. BBC [online], 26 May 2014. Retrieved 2September 2014, from <http://www.bbc.co.uk/news/uk-politics-27572878>
- Rogers, R. and Walters, R. (2006). *How Parliament Works (6th Edition)*. London: Pearson Longman.
- Rosenblum, M. R. (2003). The Political Determinants of Migration Control: A Quantitative Analysis. *Migraciones Internacionales*, 2(1): 161-70.
- Rosenblum, M. R. (2004). *The Transnational Politics of US Immigration Policy*. Center for Comparative Immigration Studies, University of California, San Diego.
- Rosenblum, M. R. and Tichenor, D. J. (Eds.) (2012). *Oxford Handbook of the Politics of International Migration*. Oxford: Oxford University Press.
- Rosenhek, Z. (2000). Migration Regimes, Intra-State Conflicts and the Politics of Exclusion and Inclusion: Migrant Workers in the Israeli Welfare State. *Social Problems*, 47(1): 49-67.
- Ross, T. (2013a). Migrants must wait a year for benefits, Duncan Smith says. *The Daily Telegraph*, 18 February.

Ross, T. (2013b). Minister backs rebels on Romanian migrant curbs. *The Sunday Telegraph*, 1 December.

Royal.gov.uk (2015). *The Queen in Parliament*. Retrieved 27 August 2015, from <http://www.royal.gov.uk/MonarchUK/QueenandGovernment/QueeninParliament.aspx>

Rudolph, C. (2003). Security and the Political Economy of International Migration. *The American Political Science Review*, 97(4): 603-620.

Ruggie, J. G. (1982). International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order. *International Organization*, 36(2): 379-415.

Russell, M. (2010). A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999, and the Lessons for Bicameralism. *Political Studies*, 58(5): 866-85.

Russell, M. (2013). *The Contemporary House of Lords: Westminster Bicameralism Revived*. Oxford: Oxford University Press.

Russell, M. and Benton, M. (2009). *Assessing the Policy Impact of Parliament: Methodological Challenges and Possible Future Approaches*. Paper Presented at PSA Legislative Studies Specialist Group Conference, UCL, 24 June.

Russell, M. and Cowley, P. (2016). The Policy Power of the Westminster Parliament: The “Parliamentary State” and the Empirical Evidence. *Governance: An International Journal of Policy, Administration, and Institutions*, 29(1): 121-137.

Russell, M. and Sciara, M. (2008). The Policy Impact of Defeats in the House of Lords. *British Journal of Politics and International Relations*, 10(4): 571-89.

Russell, M., Gover, D. and Wollter, K. (2016). Does the Executive Dominate the Westminster Legislative Process?: Six Reasons for Doubt. *Parliamentary Affairs*, 69: 286-308.

Russell, M., Gover, D., Wollter, K. and Benton, M. (2017). Actors, Motivations and Outcomes in the Legislative Process: Policy Influence at Westminster. *Government and Opposition*, 52(1): 1-27.

Russell, M., Morris, B. and Larkin, P. (2013). *Fitting the Bill: Bringing Commons Legislation Committees into Line with Best Practice*. London: Constitution Unit.

Bibliography

- Saggar, S. (1992). *The Politics of Race in Britain*. London: Harvester Wheatsheaf.
- Salomon, K. (1991). *Refugees in The Cold War: Toward a New International Refugee Regime in The Early Postwar Era*. Lund: Lund University Press.
- Sampson, A. (2005). *Who Runs This Place? The Anatomy of Britain in the 21st Century*. London: John Murray.
- Sassen, S. (1996a). Beyond Sovereignty: Immigration Policy Making Today. *Social Justice*, 23(3): 9-20.
- Sassen, S. (1996b). *Losing Control? Sovereignty in an Age of Globalisation*. New York: Columbia University Press.
- Sassen, S. (1998). The De Facto Transnationalizing of Immigration Policy. In Joppke, C. (Ed.), *Challenge to the Nation-State: Immigration in Western Europe and the United States* (49-85). Oxford: Oxford University Press.
- Sassen, S. (1999). Beyond Sovereignty: De-Facto Transnationalism in Immigration Policy. *European Journal of Migration and Law*, 1(2): 177-198.
- Savage, M. (2012). Migrants face block on NHS and claiming benefits. *The Times*, 12 November 2012.
- Schain, M. (1987). The National Front in France and the Construction of Political Legitimacy. *West European Politics*, 10(2): 229-52.
- Schain, M. (2002). The Impact of the French National Front on the French Political System. In Schain, M., Zolberg, A. and Hossay, P. (Eds.), *Shadows over Europe: The Development and Impact of the Extreme Right in Western Europe* (3-17). New York: Palgrave Macmillan.
- Schain, M. (2006). The Extreme-Right and Immigration Policy-making: Measuring Direct and Indirect Effects. *West European Politics*, 29(2): 270-289.
- Schain, M. (2008a). Commentary: Why Political Parties Matter. *Journal of European Public Policy*, 15(3): 465-470.
- Schain, M. (2008b). *The Politics of Immigration in France, Britain, and the United States: A Comparative Study*. New York: Palgrave Macmillan.

Schain, M., Zolberg, A. and Hossay, P. (2002). *Shadows Over Europe: The Development and Impact of the Extreme Right in Western Europe*. New York: Palgrave Macmillan.

Scharpf, F. W. (1999). *Governing in Europe – Effective and Democratic?*. Oxford: Oxford University Press.

Schattschneider, E. (1960). *The Semisovereign People*. New York: Holt, Rinehart and Winston.

Schnapper, D. (1994). The Debate on Immigration and the Crisis of National Identity. In Baldwin-Edwards, M. and Schain, M. (Eds.), *The Politics of Immigration in Western Europe* (127-139). London: Frank Cass and Company.

Schoenberger, E. (1991). The Corporate Interview as a research method in Economic Geography. *Professional Geographer*, 42(2): 180-189.

Schuck, P. H. (2000). Law and the Study of Migration. In Brettell, C. B. and Hollifield, J. F. (Eds.), *Migration Theory: Talking Across Disciplines* (187-204). New York and London: Routledge.

Schultz, J. (1982). *White Man's Country: Canada and the West Indian Immigration*. *American Review of Canadian Studies*, 12(2): 3-64.

Shane, P. M. (2009). *Madison's Nightmare: How Executive Power Threatens American Democracy*. Chicago, Il: University of Chicago Press.

Sheldrick, G. (2014). Benefits Britain here we come! Fears as migrant flood begins. *Daily Express* [online]. Retrieved 2 September 2014, from <http://www.express.co.uk/news/uk/451409/Benefits-Britain-here-we-come-Fears-as-migrant-flood-begins>

Shephard, M. and Cairney, P. (2005). The Impact of the Scottish Parliament in Amending Executive Legislation. *Political Studies*, 53(2): 303-319.

Shughart, W., Tollison, R. and Kimenyi, M. (1986). The Political Economy of Immigration Restrictions. *Yale Journal of Regulation*, 4(1): 79-97.

Simmons, A. and Keohane, K. (1992). Canadian Immigration Policy: State Strategies and the Quest for Legitimacy. *Canadian Review of Sociology and Anthropology*, 24(4): 421-452.

Bibliography

- Simon, R. and Alexander, S. (1993). *The Ambivalent Welcome: Print Media, Public Opinion and Immigration*. Westport, CT: Praeger.
- Skran, C. M. (1995). *Refugees in Inter-War Europe: The Emergence of a Regime*. Oxford: Clarendon Press.
- Smith, J. (2008). Towards Consensus? Centre-Right Parties and Immigration Policy in the UK and Ireland. *Journal of European Public Policy*, 15(3): 415-431.
- Somerville, W. (2007). *Immigration under New Labour*. Bristol: Policy Press.
- Somerville, W. and Goodman, S. (2010). The Role of Networks in the Development of UK Migration Policy. *Political Studies*, 58(5): 951-970.
- Somerville, W., Sriskandarajah, D. and Latorre, M. (2009). *The United Kingdom: A Reluctant Immigration Country*. Washington DC: Migration Information Source.
- Soysal, Y. (1993). Immigration and the Emerging European Polity. In Andersen, S. and Eliassen, R. (Eds.), *Making Policy in Europe*. London: Sage.
- Soysal, Y. (1994). *Limits of Citizenship*. Chicago: The University of Chicago Press.
- Spencer, I. R. G. (1997). *British Immigration Policy Since 1939: The Making of Multi-Racial Britain*. London: Routledge.
- Stalker, P. (1994). *The Work of Strangers: A Survey of International Labour Migration*. Geneva, CH: International Labour Office.
- Statham, P. and Geddes, A. (2006). Elites and the 'Organised Public': Who Drives British Immigration Politics and in Which Direction? *West European Politics*, 29(2): 248-269.
- Straubhaar, T. and Weber, R. (1994). On the Economics of Immigration: Some Empirical Evidence for Switzerland. *International Review of Applied Economics*, 8(2): 107-129.
- Sturges, J. E. and Hanrahan, K. J. (2004). Comparing Telephone and Face-To-Face Qualitative Interviewing: A Research Note. *Qualitative Research*, 4(1): 107-118.
- Suyama, N. (1995). Canada's Immigration Policy and International Relations. *Peace Research*, 27(2): 23-31.

Swinford, S. (2013). Ministers 'running from debate on migrants; Scores of Tory MPs to confront leaders over delay in Commons vote to ban Romanians and Bulgarians from coming to Britain until 2019. *The Daily Telegraph*, 14 December.

Syal, R. (2013). Diane Abbott warns Miliband on immigration. *The Guardian* [online]. Retrieved 27 September 2016, from <https://www.theguardian.com/uk/2013/apr/21/diane-abbott-miliband-immigration>

Tarrow, S. (1998). *Power in Movement: Social Movements and Contentious Politics*. Cambridge: Cambridge University Press.

Teitelbaum, M. S. (1984). Immigration, Refugees, and Foreign Policy. *International Organization*, 38(3): 429-450.

The Case of Chemicals. *European Journal of Political Research*, 36: 119-154.

The Commonwealth (2015). *Member countries* | *The Commonwealth*. [online] Thecommonwealth.org. Retrieved 10 January 2015, from <http://thecommonwealth.org/member-countries>

The Guardian (2012). ABCs: National daily newspaper circulation. *The Guardian* [online]. Retrieved 28 September 2016, from <https://www.theguardian.com/media/table/2012/sep/20/abcs-national-newspapers>

The Independent (2015). *The Queen drops off the top of The Sunday Times Rich List for the first time since its inception* [online]. Retrieved 27 August 2015, from <http://www.independent.co.uk/news/people/the-queen-drops-off-the-top-end-of-the-sunday-times-rich-list-for-the-first-time-since-its-inception-10204588.html>

Thieleman, E. (2004). *Does Policy Matter? On Governments' Attempts to Control Unwanted Migration*. LSE European Institute Working Paper.

Thompson, J. B. (2000). *Political Scandal: Power and Visibility in the Media Age*. Cambridge: Polity.

Thompson, J. B. (2010). *Merchants of Culture: The Publishing Business in the Twenty-First Century*. Cambridge: Polity.

Bibliography

Thompson, L. (2013a). More of the Same or a Period of Change? The Impact of Bill Committees in the Twenty-First Century House of Commons. *Parliamentary Affairs*, 66: 459-479.

Thompson, L. (2013b). *Committee of Selection and Membership of General Committees*. Written evidence submitted to the Procedure Committee for its inquiry into the Committee of Selection and membership of general committees.

Thompson, L. (2014). Evidence Taking Under the Microscope: How has Oral Evidence Affected the Scrutiny of Legislation in House of Commons Committees? *British Politics*, 9(4): 385-400.

Thompson, L. (2015a). *Making British Law: Committees in Action*. Basingstoke: Palgrave Macmillan.

Thompson, L. (2015b). Debunking the Myths of Bill Committees in the British House of Commons. *Politics*: 1-13.

Thouez, C. and Channac, F. (2006). Shaping International Migration Policy: The Role of Regional Consultative Processes. *West European Politics*, 29(2): 370-387.

Thranhardt, D. (1995). The Political Uses of Xenophobia in England, France and Germany. *Party Politics*, 1(3): 323-345.

Tichenor, D. J. (2002). *Dividing Lines: The Politics of Immigration Control in America*. Princeton: Princeton University Press.

Tilly, C. (1975). *The Formation of National States in Western Europe*. Princeton: Princeton University Press.

Timmer, A. S. and Williamson, J. G. (1998). Immigration Policy Prior to the 1930s: Labor Markets, Policy Interactions, and Globalization Backlash. *Population and Development Review*, 24(4): 739-771.

Timmermans, A. and Scholten, P. (2006). The Political Flow of Wisdom: Science Institutions as Policy Venues in the Netherlands. *Journal of European Public Policy*, 13(7): 1104-1118.

Togman, J. M. (2002). *The Ramparts of Nations: Institutions and Immigration Policies in France and the United States*. Greenwood Publishing Group.

Travis, A. (2012). *Border agency criticised by MPs over 'Bermuda Triangle' backlog*. *The Guardian* [online]. Retrieved 27 August 2015, from <http://www.theguardian.com/uk/2012/jul/23/mps-border-agency-backlog>

Travis, A. (2013a). Immigration bill – the devil's in the detail. *The Guardian* [online]. Retrieved 27 September 2016, from <https://www.theguardian.com/uk/2013/may/08/immigration-bill-queens-speech>

Travis, A. (2013b). Immigration bill: Theresa May defends plans to create 'hostile environment'. *The Guardian* [online], 10 October. Retrieved 2 September 2014, from <https://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment>

Triadafilopoulos, T. and Zaslove, A. (2006). Influencing Migration Policy From Inside: Political Parties. In Giugni, M. and Passy, F. (Eds.), *Dialogues on Migration Policy* (171-192). Lanham, MD: Lexington Books.

Tsebelis, G. and Kalandrakis, A. (1999). The European Parliament and Environmental Legislation: The Case of Chemicals. *European Journal of Political Research*, 36(1): 119-154.

UK Government and Parliament (2016). *Petitions - Archived Petition: No to 70 million*. Retrieved 27 September 2016, from <https://petition.parliament.uk/archived/petitions/19658>

UK Parliament (2014a). *Lords by party, type of peerage and gender* [online]. Retrieved 22 May 2014, from <http://www.parliament.uk/mps-lords-and-offices/lords/composition-of-the-lords/>

UK Parliament (2014b). *Membership and principal office holders* [online]. Retrieved 22 May 2014, from <http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-members/>

UK Parliament (2014c). *Frequently Asked Questions: MPs* [online]. Retrieved 22 May 2014, from <http://www.parliament.uk/about/faqs/house-of-commons-faqs/members-faq-page2/>

UK Parliament (2015). *Who's in the House of Lords* [online]. Retrieved 29 April 2015, from <http://www.parliament.uk/business/lords/whos-in-the-house-of-lords/>

Bibliography

- UK Parliament (2016). *Televising Parliament* [online]. Retrieved 28 September 2016, from <http://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentwork/communicating/overview/televisingparliament/>
- United Nations, Department of Economic and Social Affairs, Population Division (2013). *International Migration Report 2013*.
- United Nations, Department of Economic and Social Affairs, Population Division (2015). *International Migration Report 2015*.
- Van Kersbergen, K. and Krouwel, A. (2008). A Double-Edged Sword! The Dutch Centre-Right and the 'Foreigners Issue'. *Journal of European Public Policy*, 15(3): 398-414.
- van Spanje, J. (2010). Contagious Parties: Anti-Immigration Parties and Their Impact on Other Parties' Immigration Stances in Contemporary Western Europe. *Party Politics*, 16(5): 563-586.
- Vargas, J. (2014). *My Life as an Undocumented Immigrant*. *Nytimes.com*. Retrieved 27 September 2016, from http://www.nytimes.com/2011/06/26/magazine/my-life-as-an-undocumented-immigrant.html?_r=0
- Vargas-Silva, C. (2013). *The Fiscal Impact of Immigration in the UK*. Migration Observatory briefing, COMPAS, University of Oxford, UK.
- Verba, S., Schlozman, K. L., and Brady, H. (1995). *Voice and Equality: Civic Voluntarism in American Politics*. Cambridge, MA: Cambridge University Press.
- Veugelaers, J. W. P. (2000). State-Society Relations in the Making of Canadian Immigration Policy during the Mulroney Era. *Canadian Review of Sociology/Revue canadienne de sociologie*, 37(1): 95-110.
- Vine, J. (2012). *An inspection of the Hampshire and Isle of Wight Local Immigration Team*. London: Independent Chief Inspector of Borders and Immigration.
- Walkland, S. A. (1979). Government Legislation in the House of Commons. In Walkland, S. A. (Ed.), *The House of Commons in the Twentieth Century*. Oxford: Clarendon Press.

Warrell, H. and Rigby, E (2014). UK immigration minister scores 'own goal' with speech. *Financial Times*, 6 March [online]. Retrieved 2 September 2014, from <https://www.ft.com/content/6f0f296c-a534-11e3-8988-00144feab7de#axzz3C9b6gr4Y>

Watt, N. (2014a). Tory rebel pledges to reintroduce work restrictions on EU migrants. *The Guardian* [online], 23 January. Retrieved 25 September 2016, from <https://www.theguardian.com/uk-news/2014/jan/23/tory-rebel-immigration-bill-amendment-romanian-bulgarian-migrants>

Watt, N. (2014b). Norman Baker describes 'constant battle' with Theresa May. *The Guardian* [online], 4 November. Retrieved 25 September 2016, from <https://www.theguardian.com/politics/2014/nov/04/norman-baker-constant-battle-theresa-may-home-office>

Watts, J. (2001). *Immigration Policy and the Challenge of Globalization: Unions and Employers in Unlikely Alliance*. Ithaca: Cornell University Press.

Webster, P. (1999). Calais cracks down on refugees. *The Guardian* [online]. Retrieved 8 August 2017, from <https://www.theguardian.com/uk/1999/aug/07/immigration.immigrationandpublicservices>

Weiner, M. (1985). On International Migration and International Relations. *Population and Development Review*, 11(3): 441-455.

Weiner, M. (1992). Security, Stability, and International Migration. *International Security*, 17(3): 91-126.

Weiner, M. (1993). *International Migration and Security*. Boulder, CO: Westview Press.

Weiner, M. (1995). *The Global Migration Crisis: Challenge to States and to Human Rights*. New York: HarperCollins.

Whitaker, R. (1987). *Double Standard: The Secret History of Canadian Immigration*. Toronto: Lester & Orpen Dennys.

Wihtol de Wenden, C. (2011). The Case of France. In Zincone, G., Penninx, R. and Borkert, M. (Eds.), *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present* (61-127). Amsterdam: Amsterdam University Press.

Bibliography

- Wilson, J. Q. (1980). *The Politics of Regulation*. New York: Harper.
- Winder, R. (2010). *Bloody Foreigners: The Story of Immigration to Britain*. London: Hachette UK.
- Winnett, R. (2013). Landlords told: Vet migrant tenants; Owners of buy-to-let properties face fines of thousands of pounds if they rent homes to illegal immigrants under Bill set out in Queen's Speech. *The Daily Telegraph*, 8 May 2013.
- Wintour, P. (2014a). UK jobcentres should face competition, says thinktank. *The Guardian* [online]. Retrieved 27 September 2016, from <https://www.theguardian.com/society/2014/jul/21/uk-jobcentres-competition-thinktank-policy-exchange>
- Wintour, P. (2014b). MigrationWatch chairman Sir Andrew Green appointed as a peer. *The Guardian* [online]. Retrieved 27 August 2015, from <http://www.theguardian.com/politics/2014/oct/21/migrationwatch-thinktank-sir-andrew-green-peer-ukip>
- Wintour, P. and Watt, N. (2013). Front: New curbs on EU migrants in Queen's speech. *The Guardian*, 8 May 2013.
- Wright, C. (2010). *Policy Legacies and the Politics of Labour Immigration Selection and Control: The Processes and Dynamics Shaping National-Level Policy Decisions During the Recent Wave of International Migration*. University of Cambridge: PhD Thesis.
- Wright, C. (2012a). Immigration Policy and Market Institutions In Liberal Market Economies. *Industrial Relations Journal*, 43(2): 110-136.
- Wright, C. (2012b). Policy Legacies, Visa Reform and the Resilience of Immigration Politics. *West European Politics*, 35(4): 726-755.
- Wright, T. (2003). *British Politics: A Very Short Introduction*. Oxford: Oxford University Press.
- Wunderlich, D. (2010). Differentiation and Policy Convergence Against Long Odds: Lessons from Implementing EU Migration Policy in Morocco. *Mediterranean Politics*, 15: 249-272.

www.gov.uk (2014). *Policy: Creating an exceptional civil service - less bureaucratic and more skilled, digital and unified* [online]. Retrieved 30 September 2015, from <https://www.gov.uk/government/policies/civil-service-reform>

Zald, M. N. and Ash, R. (1966). Social Movement Organizations: Growth, Decay and Change. *Social Forces*, 44(3): 327-341.

Zander, M. (2004). *The Law-Making Process (6th Edition)*. Cambridge: Cambridge University Press.

Zincone, G., Penninx, R. and Borkert, M. (Eds.) (2011). *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present*. Amsterdam: Amsterdam University Press.

Zogata-Kusz, A. (2012). Theoretical Perspectives on Immigration Policy and Politics. *Contemporary European Studies*, 1: 5-21.

Zolberg, A. R. (1978). International Migration Policies in a Changing World System. In McNeill, W. H. and Adams, R. (Eds.), *Human Migration, Patterns and Policies* (241-286). Bloomington: Indiana University Press.

Zolberg, A. R. (1981). International Migrations in Political Perspective. In Kritz, M. M., Keely, C. B. and Tomasi, S. M. (Eds.), *Global Trends in Migration: Theory and Research on International Population Movements* (3-27). New York: Center for Migration Studies.

Zolberg, A. R. (1999). Matters of State: Theorizing Immigration Policy, in Hirschman, C., Kasnitz, P. and DeWind, J. (Eds.), *The Handbook of International Migration: The American Experience* (71-93). New York: Russell Sage Foundation.

Zolberg, A. R. (2003). The Archaeology of "Remote Control". In Fahrmeir, A., Faron, O. and Weil, P. (Eds.), *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period* (185-222). Oxford: Berghahn.

Zubrzycki, J. (1956). *Polish Immigrants in Britain: A Study of Adjustment*. The Hague: Marlinus Nijhoff.

Bibliography